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Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with Commission on Human Rights resolution 2005/2, the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

The present report addresses the challenges stemming from the use of private military and security companies and their impact on the enjoyment of human rights. It discusses the trend towards increasing privatization of security and its underlying consequences and points to a growing dependency of some States on private military and security companies. It also reports on challenges regarding the accountability of private military and security companies and their personnel.

The report also presents an overview of the activities carried out by the Working Group during the period under review, including its three regular sessions and the three regional consultations it held (for Asia and the Pacific, Africa and Western European and others Group) on traditional and new forms of mercenary activities. The report provides a brief overview of the United Nations policy vis-à-vis the use of private security contractors and information on the progress achieved in the elaboration of a possible draft convention on private military and security companies. The main elements of such a possible draft convention are contained in the annex for the consideration of Member States.

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I. Introduction

1. Pursuant to its mandate, the Working Group has continued to monitor mercenaries and mercenary-related activities in all their forms and manifestations, as well as to study the effects on the enjoyment of human rights of the activities of private companies offering military assistance, consultancy and security services on the international market.

2. The Working Group found that the trend towards extensive privatization of security is intensifying, while the private security industry, and in particular the export/import of private security services, remains fundamentally unregulated at the international level and often insufficiently regulated at the national level. The United States of America and the United Kingdom of Great Britain and Northern Ireland continue to be the lead suppliers as well as primary contractors of private military and security companies, mainly to support their presence in Iraq and Afghanistan. In addition to international companies, local private military and security companies are also proliferating on national markets in all parts of the world. Private military and security companies continue to provide a wide range of services, including personnel protection, site security and convoy security for military and civilian personnel working for international institutions, Governments or private entities, as well as policing and security protection services, intelligence data collection and analysis, private administration of prisons, interrogation of detainees and reportedly covert operations.

3. The Working Group continues to observe a lack of transparency regarding the activities carried out by these companies and remains concerned about the lack of accountability of these companies and their personnel for human rights abuses as well as with their overall impact on the enjoyment of human rights.

4. The Working Group focused its work during the reporting period on the elaboration of a draft of a possible new international convention on the regulation, monitoring and oversight of private military and security companies, which it believes would help distinguish the activities that could legally be carried out by such companies according to international law from the activities that should remain inherently State functions and could not under any circumstances be outsourced. The new legal instrument would establish minimum international standards for States parties to regulate the activities of private military and security companies and their personnel and provides for a monitoring mechanism at the level of the United Nations. The elements and key provisions of the proposed draft convention as prepared by the Working Group are available in the annex to the present report for the consideration of Member States.

II. Update on recent activities of mercenaries and private military and security companies and the issue of accountability

5. The Working Group continued to collect information regarding the activities of mercenaries and private military and security companies around the world. It observed that the trend towards increasing privatization of security in many parts of the world was intensifying. In addition to the extensive use of international private military and security companies in conflict situations like in Afghanistan and Iraq,

the privatization of security has also been occurring at the national level, with the risk of security becoming a commodity that only the rich would be able to afford and the risk of having a lack of accountability and responsibility on the part of such private actors. The Working Group is concerned that with the trend towards the erosion of the State monopoly of the legitimate use of force, the State is evading its duty to provide security for all its citizens equally.

A. Increased "dependency" on private military and security contractors

6. Many States are increasingly relying on private military and security contractors in the performance of military and security functions, which, until recently, had been performed by Government officials.

7. For instance, a two-year study of the United States intelligence community by *The Washington Post*[1] published on 19, 20 and 21 July 2010 found that contractors, and in particular military and security contractors, were playing a key role in intelligence activities in the United States. The study concluded that the Government of the United States had developed a "dependency" on private contractors, raising the question as to whether the Government was still in control of its most sensitive activities.

8. *The Washington Post* description of the wide range of activities[2] in which private contractors are involved demonstrates the extent of their involvement in performing functions, which, until now, had been performed by Government officials and could fall under the category of "inherently State functions".

9. Some private military and security companies have grown so powerful, in terms of the military equipment they possess and the expertise they have developed that they have become an indispensable partner in the military and security activities of some Governments. The Working Group is concerned that this dependency may lead to a situation where such partnership may become predominant over the consideration of the past human rights records of the companies. As stated by Leon Panetta, current director of the Central Intelligence Agency, contracting with corporations whose responsibility is to their shareholders does present "an inherent conflict".[3]

10. For instance, in June 2010, the Government of the United States granted the private military and security company Blackwater/Xe new contracts worth about $220 million to protect United States Government facilities in Afghanistan and elsewhere and to provide protective services to the CIA. At the same time, the company is facing several lawsuits, including one criminal suit brought by the Government of the United States against five employees of the company in relation

[1] http://projects.washingtonpost.com/top-secret-america/.

[2] According to the study, private contractors for the Central Intelligence Agency (CIA) have engaged in such activities as intelligence gathering and analysis of terrorist networks and local factions in war zones, espionage, protection of CIA officials, kidnapping of suspected extremists, interrogation of detainees held at secret prisons, training of United States intelligence officers and killing of enemy fighters.

[3] *The Washington Post*, Top Secret America, National Security Inc., 20 July 2010.

to the company's involvement in the killing of 17 civilians in Nisoor Square, Baghdad, in September 2007.[4]

11. Granting lucrative contracts to companies that have not demonstrated any interest in promoting high operational and ethical standards in their work is also in contradiction with the stated commitment of the Government of the United States to work towards a global code of conduct for the respect of human rights and international humanitarian law by private military and security companies.

12. Given that private military and security companies often operate in situations where Governments are unable to ensure respect for the rule of law, and in particular for international human rights obligations, the international community should ensure that Governments do their utmost to protect human rights and ensure respect of human rights by the companies they contract.

B. Privatization of security

13. The privatization of security is a global trend with developing countries in Africa and Latin America at the forefront of the private security market. In several countries, private security is one of the few growing sectors of the economy and one of the main private employers. The world's largest security company, Group4Securicor (G4S) employs nearly 600,000 people and is the second largest private employer in the world. It is present in some 30 countries in Africa and 22 countries in Central and Latin America.[5] In South Africa for example, reported figures show that there are over 6,000 registered and active private security companies in the country, employing close to 400,000 security guards, double the number of police officers. Kenya has some 2,000 private security companies registered which employ close to 50,000 people; in Angola, 300 private security companies have around 35,000 staff, and Nigeria has some 2,000 companies.[6] In Colombia, 3,392 private military and security companies were registered as of June 2009, and 500 new ones were seeking to register their companies.[7]

14. The presence of international private military and security companies in Africa is also growing as companies take advantage of low wages and growing markets for their services in these emerging economies. These countries have become a useful recruiting ground for international private military and security companies, which have recruited thousands of third-country nationals for their operations in Afghanistan and Iraq. In Uganda alone, more than 10,000 recruits have been trained to work in the private security business in Iraq.[8]

15. The extensive privatization of security in developing countries, where Government institutions frequently remain weak, raises important questions about the long-term security implications of such privatization, including its impact on public security, on reinforcing inequalities between the rich and the poor, and on the

[4] "CIA hires Xe, formerly Blackwater, to guard facilities in Afghanistan, elsewhere", *The Washington Post*, 24 June 2010.

[5] See http://www.g4s.com/en/.

[6] Rita Abrahamsen and Michael C. Williams, "Privatizing Africa's everyday security", Open Democracy, 1 July 2010.

[7] See http://priv-war.eu/wordpress/wp-content/uploads/2009/12/nr-19-09-col.pdf.

[8] "Why Ugandans want to work in Iraq", *BBC News*, 6 November 2009.

accountability and responsibility of such private actors. Often, private security companies have been called upon to fulfil protection needs that the national police forces have been unable to provide, not only because of a lack of sufficient resources but also because the police are often a major source of public insecurity, taking part in violence, intimidation and acts of corruption.

16. Nevertheless, one should not overlook the potentially wide-ranging consequences for the use of private security companies on State institutions and their ability to provide public services. The Working Group found that companies might also play a role in exacerbating conflicts or increasing instability in some situations. For example, in Afghanistan, the Group found that the presence and activities of private military and security companies in Afghanistan was very much interconnected with the large number of unauthorized armed groups of various kinds on Afghan territory, reinforcing the perception that the companies were a threat to stability (see A/HRC/15/25/Add.2, para. 14). In other countries, the companies have been involved in repressing social protests in relation to multinational companies involved in infrastructure, mining, oil and other natural resources activities.

C. Lack of accountability of mercenaries, private military and security companies and their personnel

17. Legal proceedings against private military and security companies and their personnel for criminal activities or human rights abuses are relatively rare. In the few criminal and civil actions that have been brought, private military and security companies have argued that courts lacked jurisdiction to examine the alleged abuses committed abroad (for example, for American private military and security companies in the case of Iraq). They have also argued that the conduct in question does not meet the threshold of "violation of international law" serious enough to trigger the application of the United States Alien Tort Claims Act. In addition, they use the arguments that these are non-justiciable political questions and that the constraints are linked to providing evidence to hinder effective prosecution.[9]

18. In general, the Working Group observed that in conflict situations, like in Afghanistan or Iraq, allegations of human rights abuses perpetrated by employees of the private military and security companies were not properly reported and investigated. In addition to a lack of effective oversight structures, often victims were unable to identify the perpetrators of the abuses owing to difficulties in distinguishing between the many military actors, be they national forces, international forces or private military and security companies. Private military and security company personnel are not always wearing distinctive uniforms and identification badges and often drive unmarked sport utility vehicles with tinted glasses and no plates, which add to the confusion.

19. The Working Group has been informed that Aegis has been contracted by the United States Department of Defense to monitor the vehicles of private military and security companies at all times through a global positioning system, including audio and video devices, which can provide the exact location at a given point in time of the vehicle as well as information on the staff in the vehicle and on any incidents if

[9] Francesco Francioni, "Private military contractors and international law: an introduction", *European Journal of International Law*, vol. 19, No. 5 (2008).

they occur. This information could be made available to local governments in the event of incidents in order to assist them in investigating any allegations of human rights abuses. It would also demonstrate the commitment of the companies to ensure further transparency of their operations and to promote accountability.

20. In the sections below, the Working Group discusses the ongoing practice of granting immunity to private contractors, as well as the few prosecution cases of private military and security companies, of their personnel and of mercenaries.

1. Immunity agreements

21. The Working Group expressed its serious concern in a press statement issued on 10 November 2009 about the immunity provided to United States personnel and defence contractors under a new United States-Colombian military accord. The Supplemental Agreement for Cooperation and Technical Assistance in Defense and Security, signed on 3 November 2009, granted the United States permission to station up to 800 military personnel and 600 private security contractors, operating on seven Colombian military bases. Article VIII of the Agreement provided privileges, exemptions and immunities to contractors, amounting to a limitation of the effective exercise of judicial jurisdiction of Colombia over United States private military and security contractors operating on its territory. In addition, the Agreement did not specify any mechanism of supervision and control by the Colombian authorities of private military and security companies hired by the Government of the United States to operate in Colombia.

22. The Working Group would like to recall that in Iraq, the United States had to renegotiate its status of forces agreement with the Iraqi authorities in 2008 after the shooting by Blackwater/Xe personnel of 17 civilians in Nisoor Square, Baghdad, on 16 September 2007. The initial status of forces agreement contained a provision, the "Coalition Provisional Authority Order 17", which granted immunity to contractors working for the Government of the United States. As of 1 January 2009, Iraq now has jurisdiction over such contractors under the Withdrawal Agreement negotiated between the United States and Iraq. To date, none of the Blackwater guards involved in the incident have been convicted.[10]

23. The granting of immunity to private contractors significantly diminishes their accountability for any crimes that they or their employees may commit and undermines the ability of victims to have access to justice and effective remedies. Given the lack of a comprehensive international legal framework governing the activities of private military and security companies, it is crucial that in all cases private military and security contractors be subject to local laws and to prosecution in local courts under such laws.

2. Prosecutions of private military and security companies and their personnel

24. The Working Group remains concerned at the lack of effective prosecutions of private military and security companies and their personnel. In the United States,

[10] The Government of the United States has appealed a decision of 31 December 2009 of Judge Ricardo M. Urbina of the United States Federal District Court for the District of Columbia to dismiss the indictment against five Blackwater guards, stating that evidence against them was inadmissible under the United States Constitution. The case is pending before the Court of Appeals.

several civil lawsuits have been lodged against such companies, but against significant legal obstacles, including the defence that the private military and security companies and their personnel could not be held liable for their actions given that the companies were operating under the exclusive control of the Government. The companies have also argued that they should enjoy immunity even for illegal conduct, including acts of torture, because they are contractors carrying out governmental functions. Private military and security companies and their personnel have also challenged the applicability of international law to them, claiming that international law obligations, including the prohibitions on torture and war crimes, do not extend to them since they are non-State actors (see A/HRC/15/25/Add.3).

25. However, the Working Group is encouraged by the recent decision of the United States District Court for the district of Maryland Greenbelt Division to proceed with the case against L-3 Services, Inc., a military contractor that had provided civilian translators for United States military forces in Iraq. The plaintiffs, a group of 72 Iraqi citizens, alleged that L-3 personnel had tortured and physically and mentally abused them during their detention. Though L-3 filed motions to dismiss using the arguments as discussed above, for the first time a court denied those arguments and allowed the case to go forward.[11]

3. Prosecutions and punishment of mercenaries

26. "Classical" mercenaries have been tried and convicted for criminal behaviour only in a handful of cases. Two of these cases are particularly notorious. The first is the trial in Equatorial Guinea of a number of mercenaries, including Simon Mann and Nick du Toit for their involvement in the attempted coup against President Obiang of Equatorial Guinea in 2004. The second was the conviction of the Israeli mercenary Yair Klein by a court in Colombia for training several members of Colombian paramilitary groups and militias of drug traffickers during the 1980s and 1990s. The Working Group notes that in the case of Equatorial Guinea, all mercenaries involved in the coup were pardoned and freed in November 2009 after having been sentenced to over 30 years imprisonment just over a year before. The Working Group raised this issue during its mission to Equatorial Guinea in August 2010, together with the allegations that the trials had failed to comply with international human rights standards and that some of the accused had been subjected to torture and ill-treatment. The Group will report on its findings in 2011.

27. Yair Klein was convicted in February 2001 by the Criminal Court of the Manizales District, Colombia, for instruction in and teaching of military and terrorist tactics, techniques and methods, committed with mercenaries and accomplices[12] and sentenced in abstentia to 10 years in prison. The Government of Colombia made unsuccessful attempts to claim his extradition from Israel. In March 2007, Interpol issued an international arrest warrant for Y. Klein, who was subsequently arrested in August 2007 at the airport in Moscow and placed in custody until his transfer to Colombia, which had requested extradition.

28. Despite the authorization given by a Russian tribunal to extradite Y. Klein to Colombia, the European Court of Human Rights decided to suspend the extradition

[11] Case 8:08-cv-01696-PJM, Document 103, filed 29/7/10.

[12] European Court of Human Rights, case of Klein v. Russia, application No. 24268/08, 1 April 2010.

procedure and on 1 April 2010 ruled that the implementation of the extradition order would give rise to a violation of article 3 of the European Convention of Human Rights (prohibition of torture and inhuman or degrading treatment or punishment).

29. The Colombian authorities have expressed their concerns and disappointment over this Court ruling, which they said provided de facto immunity for the crimes committed by Klein and his trainees and denied truth and justice for their victims. While the Working Group respects the judgement of the European Court of Human Rights on the issue of extradition, it is concerned that the decision may lead to a situation where Y. Klein would not be held accountable for his criminal activities and human rights abuses.

D. Contracting and use of private military and security companies by the United Nations

30. The Working Group contacted a number of United Nations officials to gather information on the policy of the United Nations regarding the use of private military and security companies in the context of the United Nations peacekeeping missions or other United Nations activities in conflict-affected areas. Many private military and security companies are very keen to advertise their actual or hypothetical work with the United Nations and humanitarian organizations in order to portray a positive image of their activities and have been intensely lobbying to obtain contracts in peacekeeping operations.[13] However, the interests of private military and security companies remain purely financial.

31. The United Nations is using the services of private military and security personnel in some of the conflict zones in which it is engaged. However, it lacks a firm system-wide policy governing the hiring of private military and security companies, including issues related to the vetting and monitoring of the companies and their personnel. The problem of accountability of private military and security company personnel becomes even more complex when private military contractors are used by international organizations, such as the United Nations, the European Union or the North Atlantic Treaty Organization. The concept of the institutional responsibility of intergovernmental organizations is still elusive and should prompt the United Nations to take precautionary measures to ensure that if and when it outsources its security and protection functions, it does so in accordance with the Charter of the United Nations and with international human rights standards and that it does so with proper management and oversight.

32. The Working Group sent letters in February 2010 to the Departments of Safety and Security, Management and Field Support requesting information from them about United Nations policies regarding the use of private military and security companies and the types of activities that the United Nations was contracting out to such companies and to individual security contractors, as well as information regarding the oversight mechanisms in place, including vetting procedures of personnel working as contractors for the United Nations. The Group regrets that

[13] E. Prince, founder of Xe/Blackwater, indicated that one of the main objectives of the security industry would be to obtain a substantial piece of the current United Nations peacekeeping budget estimated at $6 billion to $10 billion per year. See Robert Y. Pelton, *Licensed to Kill: Hired Guns in the War on Terror* (New York, Crown Publishing Group, 2006).

none of the departments have replied in writing to its letters and invites them to cooperate with its mandate.

33. In July 2010, at the request of the Working Group, and while in session in New York, the members of the Group met with senior representatives of the Department of Safety and Security, who underlined the readiness of the department to cooperate and exchange views with the Group on the issue.

34. Representatives of the Department of Safety and Security noted that the United Nations had been confronted with increased security challenges to ensure protection of its facilities and staff around the world. They informed the Working Group that in order to provide protection for the 12,000 to 14,000 United Nations facilities worldwide, close to 60 per cent of the United Nations offices were using the services of private military and security companies. Most were local companies, providing guard services for the office, as well as residential security for the staff.

35. The Department of Safety and Security stated that there was currently no United Nations system-wide policy regarding the outsourcing of military and security functions of the Organization to private companies and that each United Nations agency could decide to use private military and security companies and to contract them directly. However, in 2008, members of the United Nations Inter-Agency Security Management Network[14] started raising serious concerns regarding the increased use of private security providers by the United Nations and the need for further policy on the issue. The discussions have begun in the framework of the Network.

36. The Department of Safety and Security informed the Working Group that the Inter-Agency Security Management Network, at a recent meeting held in Vienna, in June 2010, had agreed to form a working group tasked with elaborating a system-wide policy for the use of private military and security companies. The primary purpose of the working group would be to consider a set of criteria for the use of private military and security companies, with the understanding that the companies would only be used as a last resort in situations where the United Nations did not have better alternatives, based on risk assessments carried out for each location.

37. The Working Group welcomes this United Nations initiative to reflect on such a core question regarding the security of its staff and facilities, including the use of private military and security companies. The Group understands the importance for the United Nations to be able to provide its assistance in tense and volatile situations while ensuring maximum security for its staff and facilities. In these conditions, pressure will continue to grow on the United Nations to hire more private military and security personnel. However, the Working Group believes that without proper policy and oversight, there is a risk that incidents could happen and have a negative effect on the image of the Organization and the United Nations role in providing assistance in the field. The United Nations should serve as a model for Member States and other organizations in the application of international human

[14] The Inter-Agency Security Management Network brings together representatives of all partners in the United Nations Network, including United Nations agencies, funds and programmes to coordinate security practices and policies across the United Nations system. The Inter-Agency Security Management Network is chaired by the Under-Secretary-General for Safety and Security and meets usually twice a year to review all existing and proposed policies, procedures and practices of the United Nations security management system and to report and make recommendations on these to the High-Level Committee on Management.

rights standards and should have a clear policy on where and in what conditions it will hire private military and security companies and on its oversight system. The United Nations should also have mechanisms to ensure that in cases of human rights abuses, private military and security contractors will be held accountable. The Working Group stands ready to provide its expertise to the United Nations while it is elaborating its policy, specifically in relation to definitions, principles, criteria and norms currently elaborated by the Working Group within its draft convention on the regulation of private military and security companies.

III. Activities of the Working Group

38. In accordance with its mandated practice, the Working Group held three regular sessions during the year, two in Geneva and one in New York. The Working Group continued its work on the elaboration of a possible new international convention on the regulation of the activities of private military and security companies. It also convened three regional governmental consultations on traditional and new forms of mercenary activities, held regular meetings with the representatives of member States, non-governmental organizations and with experts. The Working Group continued to receive and review information regarding the activities of mercenaries and private military and security companies and their impact on human rights and decided on appropriate action.

A. Regional consultations

39. In accordance with General Assembly resolution 64/151, the Working Group held three regional consultations with States representatives during the reporting period.

40. After the first consultation for Latin America and the Caribbean, held in Panama in December 2007 (see A/HRC/7/7/Add.5) and the second, for Eastern Europe and Central Asia, held in Moscow in October 2008 (see A/HRC/10/14/Add.3), the Working Group held regional consultations for Asia and the Pacific in Bangkok in October 2009 (see A/HRC/15/25/Add.4), for Africa in Addis Ababa in March 2010 (see A/HRC/15/25/Add.5) and for the Western European and Others Group in Geneva in April 2010 (see A/HRC/15/25/Add.6).

41. Participants at the consultation for Asia and the Pacific[15] noted that private military and security companies were on the rise and active in the region and that the legal framework applicable to those groups needed to be clarified and further strengthened. Participants exchanged views on their national experience with private military and security companies, with the representatives of Afghanistan and Fiji giving comprehensive presentations on the situation of the companies in their respective countries. The Working Group presented the elements of its proposed draft convention on private military and security companies and engaged in a discussion over its purpose, scope and main principles, receiving comments and recommendations.

[15] The consultation was attended by representatives of Afghanistan, Bangladesh, Cambodia, China, Fiji, the Islamic Republic of Iran, Jordan, Myanmar, Pakistan, Qatar, Samoa, Thailand, Viet Nam and Yemen, as well as by the observer of Palestine.

42. The consultation in Addis Ababa was attended by representatives of 20 African countries and by representatives from the Commission of the African Union.[16] Participants provided comprehensive information on, and engaged in discussions of, recent mercenary activities on the continent and their impact on human rights, together with the growing activities of local and foreign private military and security companies in Africa. The Working Group provided a comprehensive presentation of the elements of the draft convention, and States expressed strong support for the work done by the Group on the preparation of the draft convention.

43. The regional consultation held in Geneva in April with the representatives of Western European and Others Group[17] focused on initiatives taken at the national and regional level by Western States, as well as on elements for a possible new draft convention. The Working Group expressed its appreciation for the constructive comments it had received from many countries of the Western European and Others Group. While the Working Group noted the reservations of the European Union and others with regard to a possible new convention on the issue, it underlined the shared goal to establish more effective regulation of the private security industry in order to protect individuals from human rights abuses and to ensure that when such abuses occurred, those responsible would be held accountable and that victims would have access to effective remedies.

B. Country visits

44. The Working Group undertook two country visits in the course of 2009, one to Afghanistan and the other to the United States (see A/64/311). The full reports are contained in the addenda to document A/HRC/15/25.

45. The Working Group conducted a visit to Equatorial Guinea from 16 to 21 August 2010 to review the measures taken by the Government in the context of the attempted coups d'état conducted by mercenaries in 2004 and thereafter, including the judicial proceedings related to those cases. The Group also inquired about the trials conducted in relation to the 17 February 2009 attack on the presidential palace by alleged mercenaries, and in particular whether the due process guarantees as contained in international human rights instruments were respected.

46. The Working Group was invited to visit South Africa to discuss the current efforts of the Government to ensure oversight and monitoring of the activities of South African private military and security companies and their personnel operating abroad. The visit is scheduled for November 2011.

[16] The consultation was attended by representatives of Algeria, Angola, Burkina Faso, Cameroon, the Central African Republic, the Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Madagascar, Malawi, Mauritius, Morocco, Mozambique, the Niger, Sierra Leone, the Sudan, Uganda, Zambia and Zimbabwe, and representatives from the Commission of the African Union.

[17] The consultation was attended by representatives of Australia, Austria, Canada, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America, and representatives from the European Union.

C. Communications

47. The Working Group continues to receive information from Governments, non-governmental organizations and individuals concerning situations involving mercenaries, mercenary-related activities and allegations of human rights abuses by private military and security companies. In addition, since the Working Group last reported to the General Assembly, communications have been sent to Australia, Colombia, Fiji, Guinea, Israel, Papua New Guinea, South Africa and the United States. The Working Group would like to thank the Governments of South Africa and the United States for their prompt replies to its communications. The Working Group reiterates its interest in receiving responses from the concerned Governments in regard to allegations submitted and considers the responses to its communications to be an important part of the cooperation by Governments with its mandate. The communications and summaries of the responses received from Governments are contained in document A/HRC/15/25/Add.1.

IV. Progress achieved in the elaboration of a possible draft convention on private military and security companies

48. Following the adoption of Human Rights Council resolution 10/11 on the elaboration of a possible draft convention on private military and security companies, the Working Group continued to focus its work on the draft convention and organized a series of consultations from July 2009 to May 2010 with a wide range of stakeholders on the content and scope of such a legal instrument.

49. The initial draft of the convention was circulated on 15 July 2009 to some 250 experts, academics and non-governmental organizations for comments. In response, the Working Group received some 60 submissions, comprising a total of over 400 comments and recommendations. The Working Group also held consultations with experts and civil society representatives during its seventh session, held in New York in July 2009, in collaboration with the International Peace Institute. From September to December 2009, the Working Group considered the comments received from all the above-mentioned stakeholders and drafted an amended version of the draft convention.

50. In a second phase and in accordance with the above-mentioned resolution, in which the Human Rights Council requested the Working Group to share with Member States, through the Office of the United Nations High Commissioner for Human Rights, elements for a possible draft convention on private military and security companies, request their input on the content and scope of such a convention and to transmit their replies to the Working Group, the Working Group prepared a note on elements for a possible draft convention on private military and security companies containing the main principles and provisions of the draft convention and circulated it to all States Members of the United Nations for their comments on 4 January 2010.

51. The Working Group received submissions from Australia, Azerbaijan, Belarus, Canada, Cuba, Ecuador, Egypt, Guatemala, Lebanon, Mauritius, Qatar, the Russian Federation, Serbia, Slovenia, South Africa, Spain (on behalf of the States Members of the United Nations that are members of the European Union), Switzerland, Trinidad and Tobago, the United Kingdom and the United States. The Working

Group also received comments and recommendations from some 20 intergovernmental organizations and institutions of the Commonwealth of Independent States.

52. The Working Group also received feedback on the elements of the proposed draft convention during the three regional consultations it had held with the representatives of member States in Addis Ababa, Bangkok and Geneva (see section A above). In addition, the Working Group organized briefings for all permanent missions to the United Nations during its sessions in Geneva in April 2010 and in New York in July 2010.

53. The annex to the present report contains the elements for a possible draft convention on the regulation, monitoring and oversight of private military and security companies for consideration by Member States. The full text of the draft convention developed by the Working Group is contained in the report of the Working Group to the Human Rights Council at its fifteenth session (see A/HRC/15/25, annex).

54. The aim of a new binding legal instrument is not to ban private military and security companies but to establish minimum international standards for States parties to regulate the activities of the companies and their personnel and to set up an international oversight mechanism. The draft convention proposes:

(a) To reaffirm and strengthen the State responsibility for the use of force and to reiterate the importance of the State monopoly of the legitimate use of force;

(b) To identify the functions that are inherently State functions and that cannot be outsourced to private military and security companies under any circumstances;

(c) To limit the use of force and firearms by private military and security companies according to international human rights standards;

(d) To request that State parties develop national regimes for the licensing, regulation and oversight of the activities of private military and security companies and their subcontractors;

(e) To promote international cooperation between States regarding the licensing and regulation of the activities of private military and security companies and their oversight;

(f) To establish the increased responsibility of "home States" (where private military and security companies are registered) for the export of military and security services of private military and security companies registered and licensed in their country;

(g) To request States of operation of private military and security companies to ensure effective control over the activities of foreign private military and security companies operating on their territory;

(h) To establish an international register of private military and security companies based on information provided by member States;

(i) To establish a committee on the regulation, oversight and monitoring of private military and security companies, in accordance with established procedures

in international human rights treaties in order to monitor the measures taken by States parties to implement the convention.

55. The proposed convention would apply to States and intergovernmental organizations, within the limits of their competence, with respect to private military and security companies, their activities and personnel. It would apply to all situations where private military and security companies are used, regardless of whether the situation would be considered to constitute armed conflict.

56. The proposed convention would establish a committee on the regulation, oversight and monitoring of private military and security companies in order to monitor the legislative, judicial, administrative or other measures that States parties have adopted to give effect to the provisions of the convention. In accordance with established procedures in international human rights treaties, the committee would receive reports by States parties on the legislative, judicial, administrative or other measures that they had adopted and that would give effect to the provisions of the convention. The draft convention would also envisage an inquiry procedure and an individual complaint procedure. The committee could receive complaints from States parties considering that another State Party was not giving effect to the provisions of the convention and could set up an ad hoc conciliation commission if deemed necessary.

57. Finally, the draft proposes that the Secretary-General establish an international register of private military and security companies operating on the international market based on information provided by States parties. For the purposes of the register, each State party would be obligated to annually provide data for the register on the imports and exports of the military and security services of private military and security companies and to provide standardized information on private military and security companies registered in and licensed by the State party. The obligation to share information on companies in an open and transparent way would also facilitate greater public and parliamentary scrutiny.

V. Conclusions and recommendations

58. **The Working Group would like to emphasize its utmost concern about the impact of the activities of private military and security companies on the enjoyment of human rights, in particular when operating in conflict, post-conflict or low-intensity armed situations, and notes that private military and security companies and their personnel are rarely held accountable for violations of human rights.**

59. **It urges States to renounce the inclusion of immunity provisions in bilateral agreements for their national contractors working abroad.**

60. **It welcomes the recent initiative of the Secretariat to elaborate a comprehensive policy regarding the use of private military and security companies by the United Nations and calls on the United Nations to elaborate a clear set of criteria, vetting standards and an oversight mechanism to monitor the compliance of private security contractors with United Nations policy. The Working Group recommends that in the process of this work, the Inter-Agency Security Management Network take into consideration the definitions, criteria and principles regarding the use, regulation and oversight of private military**

and security companies, as developed by the Working Group in cooperation with member States and non-governmental organizations and experts and as contained in its draft convention elaborated by the Group. In this regard, the Working Group recommends that the United Nations ensure adequate vetting of the personnel of private military and security companies as well as ensure appropriate human rights and international humanitarian law training. It also recommends that the United Nations set up a specific and transparent register of private military and security companies vetted and recommended for contracting with the United Nations. No companies with criminal records or whose personnel are under investigation for human rights abuses should be allowed to be contracted by the United Nations.

61. The Working Group recalls that it had submitted to the Human Rights Council at its fifteenth session a possible draft convention for the regulation, monitoring and oversight of private military and security companies. The Working Group believes that the Human Rights Council would constitute the best forum for the development of a new international instrument for the regulation, oversight and monitoring of private military and security companies, which would address the human rights impact of the activities of private military and security companies.

62. The Working Group is of the opinion that voluntary codes of conduct for private military and security companies are a useful mechanism and should be encouraged. However, it firmly believes that they should be combined with the elaboration and adoption of legally binding instruments at the national, regional and international levels.

63. The Working Group encourages Member States to carefully consider the draft proposal for a possible new international legal instrument regulating private military and security companies and recommends to all Member States, in particular those confronted with the phenomenon of private military and security companies, as contracting States, States of operations, home States or States whose nationals are employed to work for a private military and security company, to contribute to the Human Rights Council open-ended Working Group tasked with elaborating a new convention regulating private military and security companies, taking into account the initial work done by the Working Group on the use of mercenaries, if such a mechanism is established.

Annex

Elements of a proposed draft convention on private military and security companies

Preamble

The preamble makes reference, inter alia, to:

- The general principles enshrined in the Charter of the United Nations, the *erga omnes* obligations related to the protection of human rights, the principles of sovereign equality of all States, the territorial integrity and political independence of every State, the right of peoples to self-determination, and the prohibition of the threat and use of force in international relations
- The principles and rules of international human rights and humanitarian law and their complementarity
- The principles contained in the Rome Statute of the International Criminal Court and the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes
- The duty of all States to prevent abuses of international human rights and humanitarian law or other abuses committed by or involving transnational corporations and other business enterprises
- The duty of all States to prevent human rights violations through legislative and other measures, the duty to investigate reports of violations and, where appropriate, prosecute and punish offenders as well as to provide adequate remedies to the victims
- The United Nations Code of Conduct for Law Enforcement Officials, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the United Nations Non-Binding Guidelines on the Use of Military or Armed Escorts for Humanitarian Convoys; the Montreux Document of 17 September 2008 on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, the United Nations Global Compact initiative for businesses
- The increasing outsourcing of inherently State functions which undermine any State's capacity to retain its monopoly on the legitimate use of force
- The increasing and alarming cases of abuses of international human rights law and international humanitarian law committed by private military and security companies and their personnel, and aware of the pressing need to establish effective measures to ensure that the activities of private military and security companies are carried out in accordance with international law
- The fact that self-regulation of private military and security companies is insufficient to ensure the observance of international human rights law and international humanitarian law by the personnel of these companies

- The urgency for States parties to agree on international minimum legal standards to regulate and monitor the activities of private military and security companies

Purposes of the convention (Article 1)

The purposes of the convention are:

- To reaffirm and strengthen the State responsibility for the use of force within the comprehensive framework of State obligation to respect, protect and fulfil human rights, and to provide remedies for victims of human rights violations
- To identify those functions which are inherently State functions and which cannot be outsourced under any circumstances
- To regulate the activities of private military and security companies and subcontractors
- To promote international cooperation between States regarding licensing and regulation of the activities of private military and security companies in order to more effectively address any challenges to the full implementation of their human rights obligations including the right of peoples to self-determination
- To establish and implement mechanisms to monitor the activities of private military and security companies and violations of international human rights and humanitarian law, in particular any illegal or arbitrary use of force committed by private military and security companies, to prosecute the violators and to provide remedies to the victims

Definitions (Article 2)

The convention proposes a number of definitions, including the following:

- **Private military and/or security company (PMSC)**: a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities.
- **Military services**: specialized services related to military actions, including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities.
- **Security services**: armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, elaboration and implementation of informational security measures and other related activities.
- **Export of military and/or security services**: an export of military and/or security services from the home State in which a PMSC is registered or export of military and/or security services which a PMSC provides outside the State

in which it is registered or where it has its principle place of management or headquarters.

- **Import of military and/or security services**: an import of military and/or security services which a PMSC registered in a foreign State provides.
- **Inherently State functions**: functions, which are consistent with the principle of the State monopoly on the legitimate use of force and that a State cannot outsource or delegate to PMSCs under any circumstances. Among such functions are direct participation in hostilities, waging war and/or combat operations, taking prisoners, law-making, espionage, intelligence, knowledge transfer with military, security and policing application, use of and other activities related to weapons of mass destruction and police powers, especially the powers of arrest or detention including the interrogation of detainees and other functions that a State Party considers as inherently State functions.
- **Contracting States**: States that directly contract with PMSCs for their services, including, as appropriate, where such a company subcontracts with another PMSC or where a PMSC operates through its subsidiary companies.
- **States of operations**: States on whose territory PMSCs operate.
- **Home States**: States of nationality of a PMSC, namely, where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, the State where the company has its principal place of management or headquarters is the home State.
- **Third States**: States other than the contracting, home States or States of operation whose nationals are employed to work for a PMSC.

Scope of application (Article 3)

- The convention applies to States and intergovernmental organizations within the limits of their competence with respect to PMSCs, their activities and personnel.
- References to "States parties" in the convention shall apply to intergovernmental organizations within the limits of their competence.
- The convention applies to all situations whether or not the situation is qualified as an armed conflict.

General principles

The convention is based on the following principles:

- **State responsibility vis-à-vis private military and security companies (Article 4)**

– Each State party bears responsibility for the military and security activities of PMSCs registered or operating in their jurisdiction, whether or not these entities are contracted by the State.

– Each State party must ensure that the PMSCs it has contracted are trained in and respect international human rights and international humanitarian law.

– No State party can delegate or outsource inherently State functions to PMSCs.

– Each State party shall take such legislative and other measures as may be necessary to establish procedures for contracting PMSCs, licensing procedures for the export and import of military and security personnel and services and the effective customs and other forms of control over export/import and re-export/re-import of firearms used by PMSCs.

– Each State party, in accordance with its domestic law, shall take legislative and other measures required to introduce full or partial prohibition on the delegation or outsourcing of military and/or security services.

- **Rule of law (Article 5)**

– Each State party shall ensure that PMSCs, their personnel and any structures related to their activities perform their respective functions under officially enacted laws consistent with international human rights and humanitarian law.

– Each State party shall take such legislative, administrative and other measures as may be necessary to ensure that PMSCs and their personnel are held accountable for violations of applicable national or international law.

– Each State party shall ensure that any contract or agreement between the State party and a PMSC on provision of military and/or security services entered into by a PMSC as well as its employees is in accordance with international law and is consistent with the legislation of the home State, the contracting State, the State of operations and third States whose nationals are employed to work for a PMSC under this contract.

- **State sovereignty (Article 6)**

– States parties shall ensure that PMSCs and their personnel under no circumstances carry out activities that undermine the sovereignty of another State, its territorial integrity and/or that contravene the principle of sovereign equality and obligation of non-intervention in the domestic affairs of other States and the principle of self-determination of peoples.

– Nothing in the convention entitles a State party to undertake in the territory of another State the exercise of jurisdiction and performance of inherently State functions under international as well as domestic laws.

• **Respect and protection of international human rights and humanitarian law (Article 7)**

– Each State party shall take legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel are held accountable in accordance with the convention and to ensure respect for, and protection of international human rights and humanitarian law

– Each State party shall ensure that PMSCs and their personnel apply due diligence to ensure that their activities do not contribute directly or indirectly to violations of human rights and international humanitarian law.

– Superiors of PMSC personnel, such as:

a. Governmental officials, whether they are military commanders or civilian superiors; or

b. Directors or managers of PMSCs;

may be liable for crimes under international law committed by PMSC personnel under their effective authority and control, as a result of their failure to properly exercise control over them, in accordance with the rules of international law. No clause in a contract shall be interpreted as evading the responsibility of superiors under international law.

• **Prohibition of the use of force (Article 8)**

– Each State party shall take such legislative, administrative and other measures as may be necessary to make it illegal for and prohibit PMSCs and their personnel to directly participate in hostilities, terrorist acts and military actions aimed at, or which States have grounds for suspecting would result in the overthrow of a Government; the coercive change of internationally acknowledged borders of the State; the violation of sovereignty; explicitly targeting civilians or causing disproportionate harm.

– Each State party shall ensure that the activities of PMSCs and their personnel do not cause or exacerbate inter- or intra-State warfare or conflict.

– Each State party shall ensure that PMSCs and their personnel do not provide training that could facilitate its client's direct participation in hostilities, terrorist acts and military actions.

• **Prohibition of delegation and/or outsourcing inherently State functions (Article 9)**

– Each State party shall define and limit the scope of activities of PMSCs and specifically prohibit the outsourcing to PMSCs of functions which are defined as inherently State functions.

- **Prohibition of outsourcing the use of certain arms (Article 10)**

– Each State party, without prejudice to its respective conventional obligations, has the duty to respect the principles of international humanitarian law such as the "basic rules" on the prohibition of certain methods and means of warfare as set out in article 35 of Additional Protocol I of 1977 to the Geneva Conventions of 1949, which refers to the prohibition of weapons that cause superfluous injury or unnecessary suffering or that are to cause widespread, long-term and severe damage to the natural environment.

– Each State party shall take such legislative, administrative and other measures as may be necessary to prevent PMSCs and their personnel from using weapons likely to adversely and/or irreversibly damage the environment on a massive scale.

– Each State party shall take such legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel under no circumstances use, threaten to use and/or engage in any activities related to nuclear weapons, chemical weapons, biological and toxin weapons, their components and carriers.

- **Prohibition on illegal acquisition, possession and trafficking in firearms, their parts and components and ammunition (Article 11)**

– Each State party shall establish and maintain an effective system of licensing or other authorization, which prohibits PMSCs, their personnel and any subcontracted personnel from trafficking in firearms, their parts, components or ammunition.

– Each State party shall take such measures as may be necessary to ensure that its licensing or authorization procedures are robust and secure and that the authenticity of licensing or authorization documents can be independently verified or validated.

– Each State party shall regulate the possession and use of firearms by personnel of PMSCs inside the premises of the client they have been contracted to protect, and restrict them from possession and use of firearms outside the limits of the premises in which they have been contracted to provide security.

National legislative regulation, oversight and monitoring

- **Specific legislative regulation (Article 12)**

– Each State party shall develop and adopt national legislation to adequately and effectively regulate the activities of PMSCs.

• **National regime of regulation and oversight (Article 13)**

– Each State party shall establish a comprehensive domestic regime of regulation and oversight over the activities in its territory of PMSCs and their personnel including all foreign personnel, in order to prohibit and investigate illegal activities as defined by the convention as well as by relevant national laws.

– States parties shall apply practical measures for sharing information on companies providing military and security services outside their territories and for establishing control over the provision of such services, as consistent with the safeguards aimed at ensuring the proper use of information without impeding their legal implementation in any way.

– States parties shall endeavour to develop and encourage global, regional, subregional and bilateral cooperation among judicial bodies and law enforcement agencies as well as financial regulation bodies in order to monitor and control any use of force by PMSCs.

– States parties shall investigate reports of violations of international humanitarian law and human rights norms by private military companies and private security companies and ensure civil and criminal prosecution and punishment of offenders.

– States parties shall take appropriate action against companies that commit human rights violations or engage in any criminal activity, inter alia, by revoking their licences and reporting to the Committee on the record of activities of these companies.

• **Licensing (Article 14)**

– Each State party shall take such legislative, judicial, administrative and other measures as may be necessary to ensure that PMSCs and their personnel carry out their activities exclusively under the respective licences and authorizations.

– Each State party shall ensure that all licences and authorizations issued to PMSCs and their personnel shall be registered in the general registry of the State and shall be granted following a transparent and open procedure.

– Each State party shall establish criteria for granting licences and authorizations to PMSCs, taking into account in particular any records or reports of human rights violations committed by the companies, providing and/or ensuring training in international human rights and humanitarian law and the existence of robust due diligence measures.

• **Licensing import and export of military and/or security services (Article 15)**

– Each State party shall take such legislative, judicial, administrative and other measures as may be required to ensure that PMSCs and their personnel import and export their services only under the respective licences and authorizations.

– Each State party which imports or exports private military and security services shall publicize their scope and activities and keep the Committee informed about its licensing regime as well as provide regular and updated information on any changes and supplements to the import or export of these services, including details of any subsidiaries or holding companies of the PMSC in question.

• **Registration and accountability (Article 16)**

– Each State party shall take such legislative, judicial, administrative and other measures as may be necessary to establish:

(a) Specific and obligatory procedures on governmental registration of PMSCs;

(b) Specific legal requirements for persons employed by PMSCs concerning, inter alia, their training and experience;

(c) A ban on the registration of PMSCs in offshore zones.

– Each State party shall establish and maintain a general State registry of PMSCs operating in their jurisdiction, including information on any subsidiaries or holding companies of each registered PMSC.

– Each State party shall identify or establish a governmental body responsible for the registration of PMSCs and exercise oversight over their activities.

• **State obligations vis-à-vis PMSCs and their personnel (Article 17)**

– Each State party shall ensure that all PMSCs registered or operating on its territory comply with fundamental international labour standards.

– Each State party shall ensure that personnel of PMSCs are professionally trained to respect relevant international human rights law and international humanitarian law.

– Each State party shall ensure that PMSC personnel are professionally trained and vetted according to the applicable international standards, in particular regarding the use of specific equipment and firearms.

– Each State party shall ensure that personnel of PMSCs strictly adhere to relevant norms of international human rights law and international humanitarian law, including through prompt investigation, prosecution and punishment of violations of human rights and humanitarian law.

– Each State party shall ensure that the personnel of PMSCs providing military and security services in the territory of a foreign country undertake to respect the sovereignty and laws of the country of operations.

- **Regulation of the use of force and firearms (Article 18)**

– Each State party shall establish rules on the use of force and firearms by the personnel of PMSCs.

– States parties shall ensure that in providing military and security services, employees of PMSCs shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.

– In providing military and security services, employees may use force or firearms only (a) to defend him/herself or other employees of the company against what he/she believes to be an imminent unlawful threat of death or serious bodily injury, in respect of the exercise of the essential right of self-defence; (b) to defend persons whom he/she is under a contract to protect against what he/she believes to be an imminent unlawful threat of death or serious bodily injury; (c) to resist what he/she reasonably believes to be an attempt to unlawfully abduct him/her, other employees of the company or a person whom he/she is under contract to protect; (d) to prevent or put a stop to the commission of a serious crime that would involve or involves a grave threat to life or of serious bodily injury.

– Each State party shall ensure that all incidents involving the use of force and firearms by PMSCs are promptly reported to the competent State bodies and ensure appropriate investigation of the incident by competent authorities.

State responsibility to impose criminal, civil and/or administrative sanctions on offenders and provide remedies to victims

- **Criminal, civil and/or administrative offences in the sphere of private military and security services (Article 19)**

– Each State party shall ensure that the acts of carrying out inherently State functions are offences under its national law.

– Each State party shall ensure that the unlawful use of force and firearms, unlawful use of certain arms and illicit trafficking in arms by PMSCs and their personnel are punished as criminal offences under its national law.

– Each State party shall ensure that all activities of PMSCs occurring without the required licence and authorization, including the export and import of military and security services are offences under its national law.

– Each State party shall take such legislative, judicial, administrative and other measures to ensure, in accordance with their obligations under international human rights law, international criminal law and international humanitarian law, that individual criminal responsibility is established and that PMSCs and their personnel are held accountable for any violations of the law, that no recourse is taken to immunity agreements, and that effective remedies are provided to victims.

– In relation to imposing penalties for offences listed in this article, due consideration should be paid to offences committed against vulnerable groups.

• **Liability of legal persons and entities (Article 20)**

– Each State party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons and entities for the offences established in accordance with the convention.

– Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative or a combination of these.

– Such liability shall be without prejudice to the criminal liability of the natural persons who have actually committed the offences.

– Each State party shall, in particular, ensure that legal persons held liable in accordance with the convention are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions.

• **Establishment of jurisdiction (Article 21)**

– Each State party shall take such measures as may be necessary to establish its jurisdiction through its domestic law over the offences set out in the convention, when (a) the offence is committed in the territory of that State; (b) the offence is committed on board a vessel flying the flag of that State or an aircraft registered under the laws of that State at the time the offence is committed; or (c) the offence is committed by a national of that State.

– A State party may also establish its jurisdiction over any of the offences set out in the convention when (a) the offence is committed against a national of that State; or (b) the offence is committed by a stateless person who has his or her habitual residence in the territory of that State.

– The convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

• **Obligations related to prosecution (Article 23)**

– Each State party shall take such measures as are necessary to investigate, prosecute and punish violations of the convention, and to ensure effective remedies to victims.

– Each State party in the interests of justice, shall take such measures as necessary to ensure that no immunity agreement from prosecution for PMSCs and their personnel for violations of international human rights law and international humanitarian law are enforced.

– Each State party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in the convention is found, shall in the cases contemplated in article 21, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

• **Extradition**
(Article 24)

– To the extent that the crimes set out in the convention are not mentioned specifically in any extradition treaty existing between States parties, they shall be deemed to be included as extraditable offences in the treaty. States parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded by them.

• **Mutual legal assistance**
(Article 25)

– The States parties shall afford one another mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the convention.

• **Transfer of criminal proceedings**
(Article 26)

– States parties may transfer to one another proceedings for the prosecution of offences under the convention in cases where such transfer is considered to be in the interests of the proper administration of justice.

• **International fund for the rehabilitation of victims**
(Article 28)

– States parties shall consider establishing an international fund to be administered by the Secretary-General to provide reparation to victims of offences under the convention and/or assist in their rehabilitation.

– The establishment of such a fund shall be without prejudice to the obligation of PMSCs and/or the individuals criminally liable to directly compensate victims of violations.

International Oversight and Monitoring

• **Committee on the regulation, oversight and monitoring of PMSCs**
(Article 29)

– For the purpose of reviewing the application of the convention, there shall be established a committee on the regulation, oversight and monitoring of PMSCs.

• **International Register of PMSCs**
(Article 30)

– States parties request the committee to establish and maintain an international register of PMSCs operating on the international market, based on information provided by States parties.

– Each State party shall provide annually for the register data on imports and exports of military and security services of PMSCs and standardized information on PMSCs registered in and licensed by the State party.

• **Reports by States parties**
(Article 31)

– Each State party undertakes to submit to the Secretary-General of the United Nations, for consideration by the committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the convention.

• **Inquiry procedure**
(Article 33)

– If the committee receives reliable information indicating grave or systematic violations of the provisions set forth in the convention, the committee shall invite the State where the offences have been reported to have occurred and/or the State of registration of the PMSC reportedly involved in such offences to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

– Taking into account any observations which may have been submitted by the State(s) concerned as well as any other relevant information available to it, the committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the committee urgently.

• **Complaints against parties**
(Article 34)

– A State Party to the convention may at any time declare under this article that it recognizes the competence of the committee to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations the convention.

• **Conciliation Commission**
(Article 35)

– If a matter referred to the committee is not resolved to the satisfaction of the States parties concerned, the committee may, with the prior consent of the States parties concerned, appoint an ad hoc conciliation commission. The members of the commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for the convention.

- **Individual and group petitions (Article 37)**

– A State party may at the time of ratification of the convention or at any time afterwards declare that it recognizes the competence of the committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State party of provisions of the convention. The committee shall not admit any communication concerning a State party which has not made such a declaration.

Final provisions

- Standard provisions regarding signature, entry into force, amendment, denunciation, reservations, conference of States parties, depository and languages (articles 40 to 49).

- **Intergovernmental organizations (Article 42)**

– Intergovernmental organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the convention.

– References to "States parties" in the convention shall apply to such organizations within the limits of their competence.

– Intergovernmental organizations, in matters within their competence, may exercise their right to vote in the Meeting of States Parties.

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Sixty-fifth session
Item 52 of the provisional agenda*
Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Work of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Report of the Secretary-General

1. The present report is submitted pursuant to General Assembly resolution 64/91.

2. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, in preparation for its field mission, addressed a letter dated 8 April 2010 to the Permanent Representative of Israel to the United Nations Office at Geneva, requesting full access to the occupied territories in order to fulfil the responsibilities entrusted to it by the General Assembly in resolution 64/91, and the opportunity to hold direct consultation with the concerned Israeli authorities on the human rights situation in the occupied territories. Regrettably, it received no response to its communication.

3. The Special Committee was supported by various United Nations agencies during the implementation of its mandate, specifically the Office of the United Nations High Commissioner for Human Rights and the offices of the Resident Coordinators in Egypt, Jordan and the Syrian Arab Republic, which assisted in the organization of the mission and offered on-site support.

4. The Special Committee carried out a mission that included visits to Egypt from 8 to 11 June 2010; to Jordan from 11 to 16 June 2010; and to the Syrian Arab Republic from 16 to 19 June 2010, where it heard the testimony of 43 witnesses about the situation of human rights in the occupied territories. Witnesses were representatives of non-governmental organizations and individuals based in the Occupied Palestinian Territory, Israel and the occupied Syrian Golan.

* A/65/150.

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Department of Public Information

5. The Department of Public Information, pursuant to paragraph 8 (d) of resolution 64/91, continued to ensure the widest circulation of the reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories by using the means of dissemination at its disposal.

6. Through its news and media products, the Department ensured that information on the Special Committee's work and findings was made available to global audiences and broadcast partners in the Organization's six official languages.

7. The News Service Section provided coverage of the Special Committee, raising its profile by posting 12 stories on its activities and findings on the United Nations News Centre website and e-mailing them to tens of thousands of interested subscribers, including hundreds of journalists.

8. The Meetings Coverage Section issued three press releases in English and three in French[1] on the work of the Special Committee.

9. United Nations Television and Video (UNTV) covered public meetings of the Special Committee and related press briefings in New York. UNTV provided regular coverage through UNifeed, its six-day-a-week satellite transmission service. During the reporting period, some 40 UNifeed news reports were fed to over 500 broadcasters worldwide.

10. United Nations Radio extensively covered the work and findings of the Special Committee in its news bulletins and current affairs magazines. In addition to direct coverage of the Committee, United Nations Radio produced news and features on a broad range of related subjects, from developments on the ground, to humanitarian needs and relief efforts, to political and diplomatic interventions and activities.

11. The 41st report of the Special Committee (A/64/339) was distributed to media, non-governmental organizations and educational institutions by United Nations information centres, services and offices. The United Nations Information Service at Geneva has served as media liaison for the Human Rights Council, which tackled the question of human rights in the Occupied Palestinian Territory during the reporting period. The United Nations Information Service at Geneva issued a series of press releases on the visit of the members of the Committee to Egypt, Jordan and the Syrian Arab Republic in June and July 2010.[2]

12. From 2 November to 11 December 2009, the Department organized a training programme for 10 young Palestinian journalists, who attended sessions at United Nations Headquarters in New York. In addition, they met with representatives of

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[1] Available from: http://www.un.org/News/Press/docs//2009/gaspd443.doc.htm; http://www.un.org/News/Press/docs//2009/gaspd444.doc.htm; and http://www.un.org/News/Press/docs//2009/gaspd445.doc.htm (English); and http://www.un.org/News/fr-press/docs/2009/CPSD443.doc.htm; http://www.un.org/News/fr-press/docs/2009/CPSD444.doc.htm; and http://www.un.org/News/fr-press/docs/2009/CPSD445.doc.htm (French).

[2] Available from http://www.unog.ch; see "News and media".

media outlets and of the funds, programmes and specialized agencies of the United Nations, as well as with other actors, in Washington, D.C. and in Geneva. The programme, which aimed to strengthen the participants' capacity as broadcast media professionals, included briefings on the situation of human rights in the Occupied Palestinian Territory.

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Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the forty-second report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, which was submitted pursuant to General Assembly resolution 64/91.

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Summary

The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories is composed of three Member States: Sri Lanka (Chairman), Malaysia and Senegal.

The present, forty-second, report to the General Assembly reflects the information gathered during the Committee's mission to the Arab Republic of Egypt, the Hashemite Kingdom of Jordan and the Syrian Arab Republic from 8 to 19 June 2010. In these three countries, the Committee interviewed 43 Palestinian, Israeli and Syrian witnesses and representatives of non-governmental organizations. In addition, it met with government representatives, representatives of regional and intergovernmental organizations, staff of the Palestinian Red Crescent Society, United Nations officials and experts from specialized United Nations agencies. The Committee also reviewed numerous relevant documents and research materials, including a written submission by the Ministry of Foreign Affairs of the Syrian Arab Republic.

The present report consists of several sections. Most significantly, section V sets out information concerning the human rights situation in the occupied territories. Section VI consists of an overview of Israeli practices affecting the human rights of Syrian Arab citizens in the occupied Syrian Golan; and section VII presents the conclusions of the report and the recommendations of the Special Committee to the General Assembly.

The Committee found there to be a long-standing pattern of violations of human rights by Israel, which are systematic and persistent. It found that Israel continued to fail to protect the occupied population and to meet its obligations under international human rights and humanitarian law. The Committee was concerned about the impact on women and children, who are particularly affected by the occupation and its associated regime. It concluded that a culture of impunity reigned, assisting in the repetition of the violations raised in previous years by this Committee and others.

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I. Introduction

1. The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories was established in 1968 by the General Assembly in its resolution 2443 (XXIII). It is composed of three Member States: Sri Lanka (Chairperson), Malaysia and Senegal. This year the Member States were represented by: Palitha T. B. Kohona, Permanent Representative of Sri Lanka to the United Nations in New York; Hamidon Ali, Permanent Representative of Malaysia to the United Nations in New York; and Momar Gueye, Minister Counsellor of the Permanent Mission of Senegal to the United Nations in Geneva. The reports of the Committee are submitted to the General Assembly and reviewed by the Special Political and Decolonization Committee (Fourth Committee) of the General Assembly.

II. Mandate

2. The mandate of the Special Committee, as set out in General Assembly resolution 2443 (XXIII) and subsequent resolutions, is to investigate Israeli practices affecting the human rights of the population of the occupied territories. The occupied territories are considered to be those remaining under Israeli occupation, namely, the occupied Syrian Arab Golan and the Occupied Palestinian Territory, which comprises the West Bank, including East Jerusalem, and the Gaza Strip. The persons covered by the resolution, and therefore the subject of the investigation of the Special Committee, are the civilian population residing in the areas occupied as a result of the hostilities of June 1967 and those persons normally resident in the areas that are under occupation but who left those areas because of the hostilities.

3. The human rights of the Palestinian people and other Arabs of the occupied territories are those referred to by the Security Council in its resolution 237 (1967) as "essential and inalienable human rights" and those rights that find their basis in the protection afforded by international law, in particular in circumstances such as military occupation and, in the case of prisoners of war, captivity. The General Assembly, by its resolution 3005 (XXVII), further requested the Special Committee to investigate allegations concerning the exploitation and looting of the resources of the occupied territories, the pillaging of its archaeological and cultural heritage and interference in freedom of worship in its holy places.

4. The "policies" and "practices" affecting human rights that are within the scope of investigation by the Special Committee refer, in the case of "policies", to any course of action consciously adopted and pursued by the Government of Israel as part of its declared and undeclared intent; "practices" refers to those actions that, irrespective of whether or not they were in implementation of a policy, reflect a pattern of behaviour on the part of the Israeli authorities towards the civilian population in the occupied areas. The Committee is not mandated to examine alleged violations of international human rights and humanitarian law carried out by Palestinian authorities or armed groups.

5. The Special Committee bases its work on the human rights standards and obligations enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political

Rights and the International Covenant on Economic, Social and Cultural Rights, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (the Fourth Geneva Convention), the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949 (the Third Geneva Convention), the Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict, and the Hague Conventions of 1899 and 1907 concerning the Laws and Customs of War on Land. The Committee also relies on those resolutions relevant to the situation of civilians in the occupied territories adopted by the General Assembly, the Security Council, the Economic and Social Council and the Human Rights Council.

6. The General Assembly, in its resolution 64/91, requested the Special Committee, "pending complete termination of the Israeli occupation, to continue to investigate Israeli policies and practices in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967, especially Israeli violations of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and to consult, as appropriate, with the International Committee of the Red Cross according to its regulations in order to ensure that the welfare and human rights of the peoples of the occupied territories are safeguarded and to report to the Secretary-General as soon as possible and whenever the need arises thereafter". The Assembly also requested the Committee "to continue to investigate the treatment of the thousands of prisoners and detainees in the Occupied Palestinian Territory, including East Jerusalem, and other Arab territories occupied by Israel since 1967".

III. Activities of the Special Committee

Field mission of the Special Committee to the Middle East

7. In preparation for its field mission to the Middle East, the Special Committee addressed a letter on 8 April 2010 to the Permanent Representative of Israel to the United Nations Office at Geneva. The letter requested full access to the occupied territories, in order to fulfil the responsibilities entrusted to it by the General Assembly, and the opportunity to hold direct consultations with the Israeli authorities concerned on the human rights situation in the occupied territories. Regrettably, as in previous years, it received no response to its communication.

8. The Special Committee, therefore, carried out a mission to Egypt from 8 to 11 June 2010, Jordan from 11 to 16 June 2010, and the Syrian Arab Republic from 16 to 19 June 2010, where it heard the testimony of 43 witnesses about the situation of human rights in the occupied territories. The Committee sought to consider all views pertinent to the situation affecting the human rights of the Palestinians and other Arabs in the occupied territories. To that end, it extended invitations to Palestinian, Israeli and Syrian witnesses and organizations, and made every effort to facilitate their appearance before the Committee. Several witnesses, notably from the Gaza Strip, were unable to appear in person; as a result, they were interviewed by telephone. The Committee was grateful for the efforts of witnesses to appear before it. During the preparation of this report, the Committee reviewed all written statements, documentation and other materials submitted to it.

9. The Special Committee also met government representatives, representatives of regional and intergovernmental organizations, staff of the Palestinian Red Crescent Society, United Nations officials and experts from specialized United Nations agencies. The Committee is particularly grateful for the cooperation of the Governments of Egypt, Jordan and the Syrian Arab Republic and for the opportunity to have met with, among others, the Ministers for Foreign Affairs of Egypt (Ahmed Aboul Gheit), Jordan (Nasser Joudeh) and the Syrian Arab Republic (Walid al-Moualem), the Deputy Minister for Foreign Affairs of the Syrian Arab Republic, Faysal Mekdad, and the Secretary-General of the League of Arab States, Amre Moussa. The Committee received a copy of the report of the Independent Fact-Finding Committee on Gaza, entitled "No safe place", presented to the League of Arab States on 30 April 2009, from the Secretary-General of the League of Arab States.

10. In addition to meeting witnesses, the Special Committee visited the Palestine Hospital in Cairo, run by the Palestinian Red Crescent Society, and met patients with long-term, in some cases permanent, injuries resulting from the Israeli offensive on Gaza in December 2008 and January 2009. While in the Syrian Arab Republic, the Committee met the United Nations Resident Coordinator, Ismail Ould Cheikh Ahmed, and members of the United Nations country team. It also visited the city of Quneitra, where it met the Governor of Quneitra Province. At the end of the visit, the Committee held a press conference in Damascus.

11. The Special Committee expresses its gratitude to the offices of the United Nations Resident Coordinators in Egypt, Jordan and the Syrian Arab Republic for their valuable assistance in preparation for and during its visits to those countries.

12. The present report is presented in accordance with General Assembly resolution 64/91.

IV. Recent developments

13. In September 2009, the United Nations Fact-Finding Mission on the Gaza Conflict, which took place during December 2008 and January 2009, concluded that both Israeli forces and armed groups from Gaza had committed serious war crimes and breaches of humanitarian law, which might amount to crimes against humanity. Its report called on both sides to launch independent investigations, in conformity with international standards, and report back on these to the Security Council. If, within six months, investigations in conformity with international standards had not taken place, the report called for the Security Council to refer the situation in Gaza to the Prosecutor of the International Criminal Court. The General Assembly endorsed the report, reiterated the demand for investigations into alleged violations and asked the United Nations Secretary-General to report back with an assessment of the investigations.[1] In April 2010, the Human Rights Council, in its resolution 13/9, established a committee of independent experts — appointed in June 2010 — to assess the status of investigations and their conformity with international standards.

14. In January 2010, Israel paid the United Nations $10.5 million in respect of losses sustained in seven incidents that had been investigated by the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between

[1] General Assembly resolutions 64/10 and 64/254.

27 December 2008 and 19 January 2009 and for which the Board had found Israel responsible. The payment followed the adoption of General Assembly resolution 64/89 in December 2009 in relation to the extensive damage to and destruction of United Nations facilities in Gaza during this period, including to schools where civilians were sheltered and to the facilities of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

15. In June 2010, the Human Rights Council adopted resolution 14/1, establishing an international fact-finding mission to investigate violations of international law resulting from an Israeli attack on a flotilla carrying aid to Gaza (see para. 45 of the present report). In July 2010, a three-member committee of experts was appointed and tasked with reporting to the fifteenth session of the Council.

V. Situation of human rights in the Occupied Palestinian Territory

16. The Special Committee heard the testimonies of 33 witnesses explaining different aspects of the human rights situation in the Occupied Palestinian Territory. Testimonies and desk research showed a pattern of violations of human rights that remained systematic and persistent. Israel continued to fail to protect the occupied population and to meet its obligations under international human rights and humanitarian law. Policies and practices relating to the occupation were the main source of violations. A culture of impunity reigned, assisting in the repetition of the violations raised in previous years by this Committee and others.

17. Women continued to be particularly affected by the occupation and its associated regime. The Special Committee was presented with numerous cases illustrating the challenges faced by Palestinian women in relation to freedom of movement, residency rights, and violence against women by Israeli soldiers and settlers. Fear of deportation and subsequent family separation, harassment and violence dominated the lives of many women and their families.

18. The closure regime continued to infringe on a broad range of rights, including the rights to health, education, an adequate standard of living, work and family life. Witnesses stressed that a high proportion of the occupied population lived in poverty, many dependent on humanitarian assistance. Scores of Palestinian civilians were killed and injured by Israeli soldiers and settlers. Over 6,200 Palestinians were held in Israeli prisons and other detention facilities; torture and ill-treatment were reportedly widely used.

19. During the reporting period, the Israeli authorities intensified efforts to curtail human rights defence and civil activism. Dozens of Palestinian human rights and civil activists were arrested, detained, subjected to excessive force during demonstrations or prevented from travelling abroad. Human rights organizations in Israel faced considerable threats to their daily work. Notably, in April 2010, Knesset members introduced a draft bill that seeks to stop any non-governmental organization operating if "there are reasonable grounds to conclude that the association is providing information to foreign entities or is involved in legal

proceedings abroad against senior Israeli government officials or IDF officers, for war crimes".[2]

A. Right to self-determination

20. In March 2010, the Human Rights Council reaffirmed "the inalienable, permanent and unqualified right of the Palestinian people to self-determination, including their right to live in freedom, justice and dignity and to establish their sovereign, independent, democratic and viable contiguous State".[3] The Special Committee believes that the failure to realize this right compromises the possibility for the full respect for and protection and fulfilment of the rights of the Palestinian people.

21. The Committee was concerned that the ongoing confiscation of land, resulting from settlement expansion and the construction of the wall, undermined the right to self-determination. Witnesses described the impact of the ongoing Israeli policies, which fragment the Palestinians socially, territorially and economically and threaten territorial contiguity, as well as efforts by Israel to alter the demographics of the strategic areas of the Occupied Palestinian Territory, including East Jerusalem. Furthermore, the alternative "fabric of life" road network for Palestinians disrupted traditional routes and led to further loss of land and territorial fragmentation.

22. The Committee learned of Israel's ongoing efforts to remove traces of Palestinian heritage, such as changing the names of streets and holy places from Arabic to Hebrew names, transforming a Muslim graveyard in West Jerusalem into an interfaith dialogue centre, and placing the Haram Al-Ibrahimi (Tomb of the Patriarchs) in Hebron and Bilal Bin Rabah Mosque (Rachel's Tomb) in Bethlehem on the Israeli national heritage list.

Settlements

23. In November 2009, Israel issued a military order imposing a 10-month moratorium on settlement construction. The freeze excluded East Jerusalem, construction that had been authorized or that had already begun, and certain public buildings. Nevertheless, in February 2010, new building construction was documented by the Israel Ministry of Defense and by an Israeli non-governmental organization in over 30 settlements. A 33 per cent increase in construction starts and a 300 per cent rise in Government-initiated construction projects in settlements between October and December 2009, prior to and in the initial stages of the moratorium, were also reported.[4]

The wall

24. The date of 9 July 2010 marked the sixth anniversary of the International Court of Justice advisory opinion on the *Legal Consequences of the Construction of*

[2] World Organization against Torture, "Human rights groups in Israel respond to proposed bill to suppress information about serious breaches of international law: a danger to democracy", 29 April 2010. Available from www.omct.org.

[3] Human Rights Council resolution 13/6, para. 1.

[4] Figures are compiled by Peace Now and include data of the Israeli Central Bureau of Statistics.

a Wall in the Occupied Palestinian Territory.[5] The court ruled that sections of the wall that ran inside the West Bank, including East Jerusalem, together with its associated regime, contravened Israel's obligations under international law. The opinion called on Israel to: cease construction of the wall "including in and around East Jerusalem"; dismantle the sections already completed; and "repeal or render ineffective forthwith all legislative and regulatory acts relating thereto". This decision continued to be disregarded by Israel and High Contracting Parties to the Geneva Conventions, who failed to ensure respect for the Convention by taking steps to ensure that Israel stops all construction and dismantles the wall.

25. During the reporting period, construction of the wall focused on certain areas around Jerusalem and Bethlehem and some re-routings to implement Israeli High Court of Justice rulings. As at July 2010, approximately 60 per cent of the 707-kilometre wall was complete and 85 per cent of its entire route ran inside the West Bank. A further 8.4 per cent was under construction, while 30.1 per cent was planned but not constructed. The total area located between the wall and the Green Line constituted over 9 per cent of the West Bank.[6] This area includes the "seam zone", in which Palestinians must request permits from the Israeli authorities in order to access their farming land and water resources, and where access to health care and education is limited.

26. Weekly Friday demonstrations protesting against the wall continued in several locations. The Israeli army continued to respond to the demonstrations, often with excessive force, leading to injuries and, in some cases, death. Over the past year, the Israeli authorities intensified their efforts against these protests and increasingly targeted organizers and prominent activists, who were arrested during night raids, detained, often ill-treated and, in some cases, sentenced to prison terms. On release, some were asked to pay high bail, prohibited to participate in demonstrations of any kind and prevented from travelling abroad. In an apparent attempt to reduce non-resident participation in weekly demonstrations, in February 2010, the army declared the area between the wall and the built-up area of the villages of Bil'in and Ni'lin closed military areas on Fridays for a period of six months, leaving non-residents who enter the area without permission liable to arrest.[7]

B. Right to freedom of movement and freedom to choose one's residence

Checkpoints, roadblocks, permits and other obstacles to movement in the West Bank

27. According to the Office for the Coordination of Humanitarian Affairs, the total number of closure obstacles fell from 626 in March 2009 to 505 in March 2010. However, the number of "flying" checkpoints increased by more than 50 per cent between December 2009 and March 2010. Despite eased restrictions on movement

[5] See A/ES-10/273 and Corr.1; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136.

[6] Office for the Coordination of Humanitarian Affairs and World Health Organization, "The impact of the barrier on health", July 2010; and Office for the Coordination of Humanitarian Affairs, "West Bank movement and access update, June 2010". All reports available from the Office's website: http://ochaonline.un.org.

[7] Ibid.

in some areas — notably between most urban areas, especially in the north of the West Bank — access of Palestinians to areas behind the wall (including East Jerusalem), Hebron City, the Jordan Valley and agricultural land near settlements did not improve.[8] The reduction in the number of checkpoints should be seen in the context of the entrenchment of certain movement control mechanisms, notably some strategic checkpoints and the expansion of the alternative "fabric of life" road network for Palestinians.[9]

28. The Israeli army opened up for Palestinian use three roads, or segments of roads, which had been reserved for the exclusive use of Israeli settlers and citizens. One of these was Road 443, which Palestinians can now access through three newly established checkpoints.[10] Witnesses explained that the limited opening of Road 443 would likely have little effect as access to Ramallah and East Jerusalem would not be allowed.

29. The closure regime affected almost every aspect of daily life. For example, the right to family life was violated as thousands of Palestinian families were forced to live apart, waiting for applications for family reunification to be processed and approved. They included Palestinians with a spouse or family member holding a foreign passport, or those from the West Bank wanting to join family in East Jerusalem, or those from Gaza wishing to join family in the West Bank. Women were particularly affected, often left to raise their children without a father present and confined to their homes, resulting in isolation, increased vulnerability and feelings of "imprisonment". Another example relates to impeded access to East Jerusalem, which restricted access to medical care and religious sites for Muslim and Christian Palestinians.

Israel's continued policy of isolation of Gaza

30. The closure of the Gaza Strip remained extreme, despite Israel's announcement in June 2010 that it would ease the blockade of Gaza by allowing unrestricted entry for all items except a published list of military and "dual use" items. Restricted categories included much needed goods, such as construction materials.[11]

31. At the time of writing, weekly truckloads of goods entering Gaza had increased, but continued to fall well below the needs of the population. In addition, most goods entering continued to be food and hygiene items and other consumer goods, and therefore not useful for productive purposes. The United Nations reported that only limited amounts of construction materials designed for three projects carried out by international organizations had been allowed into Gaza by

[8] Office for the Coordination of Humanitarian Affairs, "West Bank movement and access update, June 2010". Figures exclude obstacles in the Israeli-controlled area of Hebron City (H2) and crossing points along the wall.

[9] International Labour Organization, *The situation of workers of the occupied Arab territories* (Geneva, 2010).

[10] Office for the Coordination of Humanitarian Affairs, "West Bank movement and access update, June 2010". The other two roads opened were: 6- and 3-kilometre stretches of Roads 585 and 3265, respectively.

[11] Statement made by the Office of the Prime Minister of Israel following the Security Cabinet meeting on 20 June 2010.

July 2010.[12] Each truckload destined for one of these projects underwent extensive coordination procedures, which drove up costs and slowed down progress.[13]

32. The announced easing did not include measures to address the almost total ban on exports and the movement of people. Israel consistently prevented Palestinian civilians in Gaza from leaving the territory to visit family, to study and to receive medical treatment in other parts of the Occupied Palestinian Territory and further afield. Gazans received occasional respite from the opening of the Rafah crossing, controlled by Egypt, for short periods.[14] Nevertheless, exit through Rafah does not guarantee access to other parts of the Occupied Palestinian Territory, which is at the discretion of the Israeli authorities.

Home demolitions and forced evictions

33. Israel's policy of forced evictions and home demolitions in the West Bank, notably in East Jerusalem and Area C, stems primarily from its policies of planning, development and building that severely restrict Palestinian construction. Thousands of Palestinians were denied permits to build on their land, thereby compelling them to build without a permit. Palestinian construction was effectively prohibited in about 70 per cent of Area C, or approximately 44 per cent of the West Bank, in areas largely designated for the use of Israeli settlements or the Israeli army. Similarly in East Jerusalem, Israel's failure to provide Palestinian neighbourhoods with adequate planning and its rejection of the majority of permits for construction resulted in an estimated annual shortfall of 1,100 housing units for Palestinians.[15]

34. Despite a suspension of demolitions in Area C since July 2009, the Israeli authorities continued to serve stop-work and demolition orders to the residents. Between January and July 2010, Israel demolished 242 Palestinian-owned structures in Area C, displacing 282 people, including dozens of children. According to the Israeli State Attorney's Office in December 2009, approximately 2,450 Palestinian-owned structures in Area C had been demolished due to lack of permit over the course of the previous 12 years.[16]

35. In East Jerusalem, 24 Palestinian-owned structures were demolished, displacing 32 people, including 17 children in the first half of 2010. In July 2010, the Jerusalem Municipality demolished seven Palestinian-owned structures, forcibly displacing 25 Palestinians, including 12 children, and affecting another 26 people, including 8 children. Although, these were the first demolitions of inhabited houses since November 2009, demolitions of uninhabited and non-residential structures, and the distribution of demolition orders, had continued during this period.[17]

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[12] With the exception of glass, wood and aluminium, which were allowed entry in recent months.

[13] Office for the Coordination of Humanitarian Affairs, "Protection of civilians", 16-22 June and 30 June-6 July 2010.

[14] However, in June 2010, Egypt opened the Rafah crossing in both directions until further notice, for the first time and for an unspecified duration since it was officially closed in June 2007.

[15] Office for the Coordination of Humanitarian Affairs, "The planning crisis in East Jerusalem", April 2009.

[16] Office for the Coordination of Humanitarian Affairs, "Protection of civilians", 28 July-10 August 2010; "Restricting space: the planning regime applied by Israel in Area C of the West Bank", December 2009.

[17] Office for the Coordination of Humanitarian Affairs, "Protection of civilians", 7-13 July 2010.

36. The Office for the Coordination of Humanitarian Affairs recorded a marked increase in demolitions in July 2010, when over 140 Palestinian structures were demolished in Area C and East Jerusalem. They also noted a rise in the number of stop-work and demolition orders.[18]

Revocation of residency rights

37. Israeli authorities continued to withdraw permanent residency status given to Palestinians living in East Jerusalem if they could not prove that they had met certain conditions, notably not leaving their city for more than seven years and not acquiring citizenship in any other country. The routing of the wall and the steep rise in rental prices were two important factors that placed many Jerusalemites at risk of losing their permanent residency status as they found themselves living to the east of the wall.

38. According to the Israeli Ministry of the Interior, 4,577 East Jerusalem residents, including 99 children, had their residency revoked in 2008 alone.[19] This marks a dramatic increase; according to data collected by one organization, the number of cases of residency revocation in 2008 alone is equal to approximately one half of the total number of cases between 1967 and 2007.

39. Israel also used political justifications for revoking residency. In June 2010, three elected members of the Palestinian Legislative Council (the Palestinian Parliament) and a former Palestinian Authority Minister for Jerusalem Affairs, all permanent residents of Jerusalem, were ordered to leave occupied East Jerusalem as their residency had been revoked, in line with a 2006 decision by the Israeli authorities.[20] A petition was filed at the Israeli Supreme Court in June 2010 contesting the revocation order, but the case remains pending.[21] The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 warned that "[f]orcibly transferring these individuals would constitute serious violations of Israel's legal obligations ...".[22] In July 2010, one of the men was detained; a court subsequently ordered him to be released and to leave East Jerusalem; while the three other men sought refuge in the International Committee of the Red Cross East Jerusalem office.

Forced displacement

40. The combination of settlement expansion and settler violence, home demolitions and forced evictions, the wall, and the revocation of residency rights caused significant forced displacement in the Occupied Palestinian Territory.

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[18] Office for the Coordination of Humanitarian Affairs, "Sharp increase in demolitions and displacement in the West Bank", July 2010.

[19] Office for the Coordination of Humanitarian Affairs, "Protection of civilians", 2-8 June 2010.

[20] The then Israeli Interior Minister told the men that they should either give up their membership of Parliament or have their residency revoked.

[21] Adalah, "Motion for injunction filed to Israeli Supreme Court to stop imminent deportation process of Palestinian Legislative Council members from Jerusalem", June 2010: available from www.adalah.org; Al-Haq, "Al-Haq legal analysis: forcible transfer of Jerusalem parliamentarians demonstrates an escalation of Israeli measures to transfer Palestinians from occupied East Jerusalem", June 2010. Available from www.alhaq.org.

[22] Office of the High Commissioner for Human Rights, "Israel must avoid further violations of international law in East Jerusalem — UN human rights expert", 29 June 2010. Available from www.ohchr.org.

41. The Special Committee was extremely concerned to receive information regarding Israeli Military Orders Nos. 1649 and 1650 of April 2010. They place large numbers of Palestinians residing in the West Bank at risk of deportation to the Gaza Strip or abroad at any moment. The orders allow the military to define any person in the West Bank, including a resident of East Jerusalem, as an "infiltrator", making them liable to transfer, deportation, criminal charges, fines and/or imprisonment. The orders are applicable to anyone who has entered the area "unlawfully" or who does not carry an Israeli-issued permit. Witnesses indicated that their vague wording means they can be applied arbitrarily to anyone from the West Bank. The orders reinforce previous policies aimed at separating the West Bank from the Gaza Strip and formalize an existing removal policy.

42. One category of persons at particular risk of transfer to the Gaza Strip is Palestinians in the West Bank, including residents of East Jerusalem, whose registered address is in Gaza. Some of these people have lived in the West Bank for years or even all their lives, but have been unable to change their registered address since 2000, when Israel effectively froze changes to the Palestinian population registry. Witnesses explained that many people have severely limited their daily movements, including by avoiding crossing checkpoints within the West Bank, for fear of being detained and deported. Since the orders came into effect, several cases of deportation have reportedly been recorded.

C. Right to life

43. The Special Committee was extremely concerned about the loss of life in conflict-related violence and noted that the inherent right to life is the most fundamental of all rights and is protected by a number of international legal instruments to which Israel is a party. Between January and May 2010, the Office for the Coordination of Humanitarian Affairs recorded the killings of 6 Palestinians and 1 Israeli soldier and the injury of 675 Palestinians and 84 Israeli soldiers in the West Bank, including in East Jerusalem. In the Gaza Strip, 31 Palestinians (including 9 civilians), 3 Israeli soldiers and 1 foreign national were killed, while 116 Palestinians (including 100 civilians) and 5 Israeli soldiers were injured.

44. The Israeli army conducted frequent incursions into the border areas of the Gaza Strip. The army fired regularly at alleged military and civilian targets to enforce its self-declared "buffer zone", a no-go military area in Gaza along the perimeter fence with Israel. Between January and May 2010, this resulted in the killing of over 20 people while dozens more were injured. They included 21-year-old Ahmad Deeb, who was killed while participating in a peaceful protest against the "buffer zone" that was held near the area. On several occasions, the Israeli army shot live fire at demonstrators who attempted to approach the perimeter fence with Israel.[23] Regular demonstrations protesting against the "buffer zone" began in January 2010 by farmers and others living and working in and near the "buffer zone".

[23] Adalah, "Adalah and Al Mezan demand the opening of a criminal investigation into the killing of Ahmad Deeb by the Israeli military during a peaceful demonstration near the border in Gaza", 28 June 2010. Available from www.adalah.org.

45. In May 2010, the Israeli naval commando forces intercepted a flotilla of six ships, carrying about 700 hundred civilians from several countries and relief supplies destined for the Gaza Strip, in international waters. Nine people were killed and many others were injured; 10 Israeli soldiers were also injured. The ships, including their cargo, were seized and the passengers were detained and/or deported. The Security Council, the Secretary-General and the High Commissioner for Human Rights called for an investigation conforming to international standards. The Human Rights Council established an international fact-finding mission to investigate the incident in June 2010, which is scheduled to report to the Council at its fifteenth session. In June 2010, the Government of Israel appointed the Turkel Commission to investigate the incident and security issues related to the blockade, as well as to examine Israel's mechanism for investigating complaints of violations of the laws of war.

46. In the northern West Bank in March 2010, Israeli soldiers reportedly shot and killed four Palestinian civilians in two separate incidents. Two minors were killed in the aftermath of a demonstration by the residents of Iraq Burin village, protesting against the expansion of an Israeli settlement. The other two men were killed on the following day in the vicinity of nearby Awarta village. The Israeli army reportedly launched internal investigations that found that "tactical errors" had been made, and that some of the deaths could have been avoided. A criminal investigation by the Israeli Military Police into the killings of the minors was opened.

47. The Special Committee received worrying evidence that investigations conducted by the Israeli authorities into the Israeli military offensive on Gaza in December 2008 and January 2009 failed to meet the requirements of effectiveness, independence and transparency. As at July 2010, Israel confirmed that 47 cases had been referred for criminal investigation, of which criminal indictments had been issued for four soldiers, which had so far resulted in one conviction relating to the theft of a credit card. Two soldiers were indicted for compelling a minor "to assist them in a manner that put the minor at risk" and another faces criminal charges for killing a Palestinian civilian who was among a group of civilians waving white flags. The authorities also mentioned other cases, including the attack on UNRWA headquarters, in which disciplinary measures had been taken against soldiers, but no criminal proceedings had been launched.[24] In July 2010, the Human Rights Committee called on Israel to "launch, in addition to investigations already conducted, credible, independent investigations into the serious violations of international human rights law" and stated that "[a]ll decision makers, be they military and civilian officials, should be investigated and where relevant prosecuted and sanctioned".[25]

D. Right to liberty and security of person

Prisoners and detainees

48. According to figures of the Israeli authorities, received by an Israeli human rights organization, as at June 2010, over 6,200 Palestinians were held in Israeli

[24] State of Israel, "Gaza operation investigations: second update", 19 July 2010. Available from www.mta.gov.il.

[25] CCPR/C/ISR/CO/3, para. 9.

prisons or other detention facilities.[26] According to witness testimonies, these included over 30 women, over 300 children, over 100 who had served for more than 20 years, over 150 with chronic illnesses and nearly 20 with a disability. They also included less than 10 Palestinians (primarily from Gaza) detained without charge or trial as "unlawful combatants" for allegedly having taken part in hostilities against Israel, directly or indirectly, or for membership of a force carrying out hostilities against Israel; their detention violates the right to a fair trial and to a presumption of innocence and allows for indefinite, sometimes prolonged, detention.

49. In March 2010, the Israeli High Court of Justice ruled that Israel's policy of holding Palestinian detainees and prisoners from the Occupied Palestinian Territory in Israel was legal, despite the prohibition under the Fourth Geneva Convention of transfer of prisoners from the occupied territory and their detention in the occupying State.[27]

50. In December 2009, the Israeli High Court of Justice upheld a ban — imposed in June 2007 following the capture of Israeli soldier Gilad Shalit — on family members from Gaza from visiting their relatives held in Israeli prisons, arguing, among other things, that family visits are not a basic humanitarian need and that Palestinians from Gaza have no right to enter Israel. This decision reportedly affected over 700 prisoners from Gaza.

51. During the period under review, the new military court established for juveniles under the age of 16 began to hear cases. Until the establishment of this new court, pursuant to Military Order No. 1644 of July 2009, children had been tried in military courts with adults. Lawyers and organizations defending children and prisoners' rights concurred that the new court was not equipped for children and that the same judges sit in both military courts.

52. The Special Committee heard that Israel is holding an unknown number of bodies in military cemeteries and refrigerators. The bodies are those of Palestinian prisoners who died in Israeli prisons, Palestinians involved in military activities and others. Their families had not received official confirmation that their relatives are dead, making it impossible for them to bury their loved ones and to grieve properly for them. In the first hearing of its kind, in December 2009, the Israeli High Court of Justice ordered a body to be released to his family after the army acknowledged holding the body in a military cemetery. The Israeli authorities argue that holding these bodies acts as a deterrent and as a means of preventing public demonstrations around funerals. Witnesses suggested that the bodies may also be used as bargaining chips in prisoner exchange negotiations.

Torture and cruel, inhuman or degrading treatment

53. The Special Committee was concerned by reports of widespread torture and ill-treatment during interrogation, including of children. In July 2010, the Human Rights Committee called on Israel to "incorporate into its legislation the crime of torture" and "completely remove 'necessity' as a possible justification" for torture.[28]

[26] B'Tselem, Statistics on Palestinians in the custody of the Israeli security forces. Available from www.btselem.org (accessed 14 September 2010).

[27] Adalah, "Adalah briefing note: Palestinian prisoners' rights", April 2010. Available from www.adalah.org.

[28] CCPR/C/ISR/CO/3, para. 11.

Ill-treatment and, at times, torture were also inflicted during arrests and the period of initial detention. The Committee was informed of a survey of one hundred 12- to 18-year-olds detained during 2009, carried out by a children's rights organization, which found that the majority reported being subjected to torture or ill-treatment, including threats of or actual sexual violence.

54. According to witness accounts, detention conditions often fell below the minimum standards and may even amount to cruel, inhuman and degrading treatment or torture. These included: poor quality and quantity of food; inadequate health care; and the use of torture methods (including sleep deprivation, *shabeh* and threats of or actual detention of family members).

55. Perpetrators of torture were not held to account as complaints by victims of torture were rarely referred to criminal investigation. Between 2001 and 2009, no criminal investigation was reportedly launched into over 600 complaints of torture by the Israeli security services. In September 2009, the Israeli High Court of Justice ruled against the use of family members as a tool for extracting confessions, unless they have a direct link to the case and are also a suspect.[29] However, witnesses pointed out that it is unclear how this provision would be interpreted.

Settler violence

56. Witnesses reported a rise in the number of attacks by settlers against Palestinian civilians and their property. Between January and July 2010, the Office for the Coordination of Humanitarian Affairs recorded 168 attacks by Israeli settlers resulting in either Palestinian injuries or affecting Palestinian property.

57. The Special Committee was concerned by the Israeli authorities' ongoing failure to prevent and stop attacks or to prosecute perpetrators. Witnesses described that victims were frequently reluctant to file complaints because they lacked confidence in the law enforcement system and feared reprisal attacks or harassment when settlers learned of the complaint.

58. Settlers commonly threw stones at homes or individuals, destroyed crops (especially olive trees and livestock) and in isolated instances, even set fire to and desecrated mosques. In November 2009, the Office for the Coordination of Humanitarian Affairs highlighted a deliberate strategy by Israeli settlers in the West Bank of attacking Palestinian communities when the Israeli authorities threatened to remove a settlement outpost. It identified 83 Palestinian communities with a total population of 248,700 as being highly or moderately vulnerable to settler violence.

E. Right to an adequate standard of living, including adequate food, clothing and housing

59. In 2009, economic activity accelerated but was unevenly distributed — real gross domestic product growth was estimated at 8.5 per cent in the West Bank and 1 per cent in the Gaza Strip[30] — and fragile given that it was driven primarily by donor

[29] The Public Committee Against Torture in Israel, briefing to the Human Rights Committee, June 2010.

[30] World Bank, "Towards a Palestinian State: reforms for fiscal strengthening", 13 April 2010. Available from www.worldbank.org.

assistance. Notwithstanding, unemployment rates remained elevated and prices remained high in relation to average incomes. Poverty rates remained very high and a large percentage of the population continued to depend on some form of humanitarian aid.

60. The majority of the population in Gaza continues to experience power cuts of 8 to 12 hours per day. Operation of the power plant is impeded by the shortage of materials needed to maintain and repair vital equipment, resulting from the blockade. Some 97 essential materials have been denied entry since June 2007.[31]

Right to adequate housing

61. Ongoing home demolitions and forced evictions across the Occupied Palestinian Territory had a devastating effect on family life, especially for women and children. The Committee heard that once displaced, families were forced to rely on a combination of humanitarian aid and assistance from relatives. Women reported psychological effects, resulting from the prolonged period preceding the demolition of their home and then after their displacement, finding themselves in overcrowded and unsuitable living conditions. This in turn increased the incidence of early marriage, domestic violence and early drop-out from education for girls. In the immediate aftermath of a home demolition, children were frequently separated from their parents and faced gaps in access to education, health facilities and clean water.

62. The Special Committee received data indicating that nearly two years after the Israeli military offensive on Gaza of December 2008 and January 2009, some 40,000 houses and much infrastructure still needs to be rebuilt, as a result of Israel's closure policy and its prohibition on the entry of construction materials. Some 5,000-6,000 people, whose homes it was not possible to rebuild, remained displaced and dependent on UNRWA for assistance. As noted in paragraphs 30-32, at the end of the reporting period, limited building materials were allowed entry for three projects by international organizations.

Right to food

63. The Special Committee was concerned by ongoing reports of high levels of food insecurity across the Occupied Palestinian Territory. In April 2010, the United Nations Children's Fund found that: 88.5 per cent of families in the seam zone; 79 per cent of herding families in Area C of the West Bank; 61 per cent of families in Gaza — including 65 per cent of children; and 25 per cent of the overall West Bank population were food insecure. They further noted that 73 per cent of food insecure families said that their main problem was difficulty accessing water.[32] The Committee recalled that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights.

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[31] Office for the Coordination of Humanitarian Affairs, "Protection of civilians", 2-8 June 2010.

[32] United Nations Children's Fund, "UNICEF oPt monthly update", 30 April 2010: available from www.unicef.org; Food and Agriculture Organization of the United Nations, "Farming without land, fishing without water", May 2010. Available from www.ochaopt.org.

Right to water

64. The right to water is one of the most fundamental conditions for survival and yet is severely undermined across the Occupied Palestinian Territory. Israeli water policies and practices continued to discriminate against the occupied population. Access to water continued to be unequal, with Palestinian consumption at about 70 litres a day per person — below the 100 litres per capita daily recommended by the World Health Organization — while Israeli consumption was about 300 litres a day per person. In some rural areas, Palestinians survived on as little as 20 litres per day.[33]

65. Water quality in the West Bank was very poor, leaving much of it unusable for drinking and even irrigation. Witnesses explained that a major cause is the raw sewage and hazardous industrial waste discharged by Israeli settlements and military camps into the fields and streams of the West Bank.

66. The water and sanitation situation in Gaza was dire, with over 90 per cent of the water of Gaza's portion of the coastal aquifer contaminated and unfit for human consumption. Approximately 80 million cubic litres of untreated sewage was released daily into the sea, primarily as a result of the blockade which prevented entry for materials necessary to repair, upgrade and maintain sewage treatment plants as well as the fuel necessary to operate them. The poor water quality led to serious health concerns, with children especially vulnerable to sickness caused by waterborne disease; diarrhoea caused 12 per cent of young deaths.

67. The United Nations Environment Programme warned that "the sustainability of the Gaza Strip is now in serious doubt". The report highlighted the lack of safe drinking water and the prevalence of methemoglobinemia as critical concerns and stressed that the situation with respect to groundwater continues to deteriorate and that the aquifer is likely to collapse if action is not taken urgently.[34]

F. Rights to work and to just and favourable conditions of work

68. Employment rose in 2009, but remained very low by international standards, with unemployment in the Gaza Strip among the highest rates worldwide. In 2009, unemployment in the West Bank fell from 19.8 per cent to 18.1 per cent, although in some areas of the West Bank (for example, among communities living in the seam zone), unemployment was estimated to be over 50 per cent. In Gaza, unemployment fell from 44.8 per cent to 39.3 per cent, but was estimated at about 60 per cent for under 25-year-olds. The International Labour Organization further noted a "staggeringly low rate of participation of women in the labour force" due to several factors, including the occupation's closure regime.[9]

69. In the absence of opportunities in the formal sector, the informal sector, derived from the "tunnel economy", constitutes an important source of income for many residents of Gaza and provided goods unavailable through the official Gaza crossings. Between January and March 2010, at least 12 people were killed and 21 others injured in various tunnel-related incidents. Causes of death and injury

[33] Amnesty International, "Troubled waters — Palestinians denied fair access to water", October 2009. Available from www.amnesty.org/en/library.

[34] United Nations Environment Programme, *Environmental assessment of the Gaza Strip following the escalation of hostilities in December 2008-January 2009* (2009).

included destruction of tunnels as a result of Israeli air strikes, tunnel collapses and inhalation of toxic substances or work-related accidents.[35]

70. The Israeli authorities maintained their ban on fishing beyond three nautical miles off the coast of Gaza, causing the fishing sector to shrink as the ban severely limits the quantity and quality of fishing catches, making it unsustainable as a means of livelihood. In addition, fishers were regularly shot at by the Israeli naval forces when they approached the three nautical mile limit.

G. Right to health

71. The Special Committee was informed of the troubling state of the health system in the Gaza Strip, primarily as a result of the blockade. Israel not only prevented the entry of medicines, equipment and spare parts into Gaza, pushing the health system into a weak state, but also placed severe restrictions on patients who needed to leave for treatment unavailable in Gaza.

72. As at April 2010, 23 per cent of essential drugs (including medicines for chronic diseases such as diabetes), approximately 20 per cent of essential disposables, and many treatments (notably open heart surgery and several kinds of eye surgery) were not available in Gaza. Many health facilities lacked standard equipment, such as X-ray machines and spare parts. Electricity cuts and a lack of fuel jeopardized many aspects of the health system, affecting laboratories, blood banks and refrigerators where medicines are stored.

73. Many Palestinians were therefore obliged to seek treatment outside Gaza, either in the West Bank, including East Jerusalem, in Israel or abroad. The time spent waiting for authorization from Israel to leave Gaza often resulted in missing hospital appointments and losing funding secured from the Palestinian Authority in Ramallah, resulting in the patient needing to restart the process. In the meantime, the health of a patient sometimes deteriorated and in nine cases, permit rejections or delays culminated in the deaths of patients. These included 19-year-old Fida Talal Hijjy, who died after she missed her appointment for a bone marrow transplant in an Israeli hospital due to a delay in the Israeli authorities responding to her permit request. Her request was approved on 12 November, three days after her hospital appointment and one day after her death. Israel reportedly distinguishes between life-threatening and non-life-threatening cases, in violation of medical ethics and international standards. As a result, patients with serious health problems requiring urgent treatment frequently have their request to exit Gaza denied, even if the consequence is as serious as limb amputation or vision loss.[36]

74. Witnesses noted that over 600 patients were questioned by the Israeli authorities at the Erez crossing in 2009, and 153 between January and March 2010 alone. In some cases, patients were asked to give information to the Israeli authorities in return for authorization to leave Gaza for treatment; while in others, questioning led to detention of patients.

[35] Office for the Coordination of Humanitarian Affairs, *The Humanitarian Monitor*, March 2010.

[36] Physicians for Human Rights — Israel, Adalah and Al Mezan Center for Human Rights, "Who gets to go?", June 2010. Available from www.adalah.org.

75. Witnesses explained that the psychological effects of the devastating Israeli military offensive on Gaza in December 2008 and January 2009 persisted, especially among children, and that the effects will last for several years. Witnesses highlighted the particularly high levels of post-traumatic stress disorder recorded among the Gazan population. In addition to the psychological damage, the Committee observed first-hand the long-term, sometimes permanent, physical damage caused when it met victims of the offensive in Cairo.

76. Access to health care was also seriously compromised in the West Bank. Holders of West Bank identification documents continued to face great difficulties in accessing the six East Jerusalem non-government hospitals, which provide critical tertiary care. Patients continued to require permits to enter, which was only possible on foot through one of three very crowded checkpoints, adding stress and strain to people already vulnerable due to illness or disability. Palestinians living in the seam zone continued to face particular difficulties in accessing health care.

H. Right to education

77. The blockade of the Gaza Strip, restrictive access and building permit systems in Area C, and insufficient and discriminatory urban planning policies in East Jerusalem resulted in tens of thousands of Palestinian students suffering from a critical shortage of schools and classrooms. The denial of access to building materials in Gaza prevented many schools from being rebuilt. UNRWA needs to build 100 new schools, including 15 immediately to address problems of overcrowding and for thousands of new pupils.[37] Classroom shortages are also prevalent in East Jerusalem and other parts of the West Bank, notably in Area C. Facilities are often substandard and do not meet basic educational and health standards. In some cases, they also face the threat of demolition due to the lack of a building permit.

78. As a result of the policy of separation of the West Bank from the Gaza Strip, students from Gaza wishing to attend Palestinian universities in the West Bank — often to study subjects that are unavailable in Gaza, such as occupational therapy and dentistry — have been routinely denied from doing so. In October 2009, Berlanty Azzam, a 22-year-old student who had been living and studying in Bethlehem University since 2005, was removed to Gaza, just two months before she was scheduled to complete her BA in Business Administration. In December 2009, the Israeli High Court of Justice ruled to uphold the army's decision to remove her, despite its recognition that there were no security allegations against her. Israel also continued to prevent Gazan students from travelling overseas to study.

79. Students, especially those active on the student council, risked arrest and detention. According to data collected by one organization, nearly 500 students from Bir Zeit University have been arrested by Israel since November 2004. They included a student who was arrested in March 2010 — two months before his graduation — and charged with joining an active student society in January 2009. Students, requiring a permit to travel to their place of study, often face arbitrary interrogations by the Israeli intelligence services. For example, the Committee heard that students of medicine at al-Quds University have been threatened with not being

[37] See S/PV.6315.

granted a permit to access the university if they refuse to cooperate with the intelligence services. In a recent survey, approximately 30 per cent of students at Bir Zeit University reported being brought in for interrogation or having their houses raided.

VI. Situation of human rights in the occupied Syrian Golan

80. The Special Committee met 10 witnesses from the occupied Syrian Golan, including six persons in the Syrian Golan town of Quneitra. Regrettably, the Committee was unable to visit the occupied Golan. As noted above, the Committee received no response from the Israeli Government to its request of 8 April 2010 for full access to the occupied territories and an opportunity to hold direct consultations with the Israeli authorities concerned on the human rights situation in the occupied territories.

A. Past legacy

81. The Syrian Golan was occupied by Israel during the 1967 Arab-Israeli conflict. In 1981, Israel passed the Golan Heights Law, which extended Israeli law and administration and thus annexed the entire Israeli-controlled territory of Golan. Israel therefore considers the Golan an annexed and not an occupied territory, a claim that is not recognized by the Security Council or the Syrian Arab Republic.

82. The Security Council, in its resolution 497 (1981), decided that the Israeli decision to impose its laws, jurisdiction and administration in the Syrian Golan was null and void. The General Assembly, in its resolution 64/21, declared Israel's failure to comply with resolution 497 (1981) and called upon Israel to withdraw from all the occupied Syrian Golan to the line of 4 June 1967 in compliance with the relevant Security Council resolutions.

B. Recent developments

83. The Secretary-General's report of December 2009 on the United Nations Disengagement Observer Force — established in 1974 to maintain the ceasefire between Israel and the Syrian Arab Republic — noted that the ceasefire had been maintained and that the area of operation had remained generally quiet. The Secretary-General encouraged Israel and the Syrian Arab Republic to resume indirect peace talks under the auspices of Turkey. In June 2010, the mandate of the United Nations Disengagement Observer Force was renewed for an additional six months.

84. In December 2009, the United Nations Special Coordinator for the Middle East Peace Process told the Security Council that a "Knesset bill requiring a certain majority of Knesset members, or a referendum, to approve the return of any territory in the Golan Heights or East Jerusalem passed its second reading on 9 December. A further reading is required, but if passed this bill could make any future territorial return more complex."[38]

[38] S/PV.6248.

C. Human rights situation in the occupied Syrian Golan

85. International human rights and humanitarian laws continue to apply. In March 2010, the Human Rights Council adopted two resolutions relating to the occupied Syrian Golan. Both resolutions called on Israel to desist from settlement building and from efforts to change the physical and demographic composition of the occupied Syrian Golan. In resolution 13/7, the Council reminded Israel of its international obligations and called on Israel to reverse the settlement policy as a first step towards their dismantlement. In resolution 13/5, the Council further called on Israel to cease "imposing Israeli citizenship and Israeli identity cards on the Syrian citizens in the occupied Syrian Golan" (para. 3) and to "allow the Syrian population of the occupied Syrian Golan to visit their families and relatives" in the Syrian Arab Republic (para. 4). It also emphasized that displaced persons "must be allowed to return to their homes and to recover their property" (para. 2). General Assembly resolutions 64/95 and 64/21 further recalled the applicability of the Geneva Conventions.

86. In a letter to the Secretary-General and President of the Security Council in January 2010, the Minister for Foreign Affairs of the Syrian Arab Republic expressed concern at the "solicitation by Israel, the occupying Power, of competitive bids in relation to the sale of 11 residential buildings in the village of Ain Qunyah in the occupied Syrian Golan" in late 2009. He added that the sale was conditional on giving preference to army veterans, as recommended by the Israeli Ministry of Defense, stating that this "sets a dangerous precedent that threatens to alter the demographic makeup of the occupied Syrian Golan".[39]

87. The Special Committee heard testimony regarding the planned expansion of Israeli settlements in the Golan. Currently, there are approximately 20,000 settlers living in some 40 settlements. They live among the original Syrian population, now reduced to nearly 20,000 inhabitants of just five remaining Syrian villages.

88. Government officials of the Syrian Arab Republic and witnesses raised concerns about the inequitable distribution of water resources among the occupied Syrian population and Israeli settlers. They told the Committee that the daily water needs of Syrian residents for domestic use and for irrigation were not adequately met. Reports further indicate that Israel continued to impose discriminatory water quotas on Syrian farmers and to administer an indirectly discriminatory tariff system, making Syrian citizens pay more than Israeli settlers for water.

89. The Ministry of Foreign Affairs of the Syrian Arab Republic recalled that access to essential services, notably education and health, was compromised. In its report to the Special Committee, it highlighted problems of overcrowding and dilapidation of schools and lack of adequate medical facilities.

90. In 2010, the International Labour Organization noted few local employment opportunities, particularly for university graduates and other young people seeking professional posts. It found that agriculture remained the main source of income for most families and cited information received from the Government of the Syrian Arab Republic on discrimination against Syrian workers and landowners in the occupied Syrian Golan. This included denial of jobs as a result of not having served in the Israeli army, as well as restrictions on the use of water, especially for

[39] A/64/619-S/2010/4.

irrigation, and high taxation. The Government of the Syrian Arab Republic noted that taxation on the agricultural produce of the occupied population can reach up to 50 per cent. Another impediment to agricultural production was reportedly the uprooting of trees and destruction of crops. Both the Ministry of Foreign Affairs of the Syrian Arab Republic and witnesses reported several instances of uprooting of trees and burning of land in May 2010.[9]

91. The Special Committee heard that there are approximately seven prisoners from the Golan currently detained in Israeli prisons, one of whom had spent some 25 years in detention. Detainees reportedly suffer from inadequate medical care in conditions that may not meet the United Nations Standard Minimum Rules for the Treatment of Prisoners.

92. Information received indicated an attempt by Israel to sever or restrict ties between the occupied Syrian population and their home country of the Syrian Arab Republic. For example, one witness reported that Israel had begun to ask men from the Golan to sign a paper confirming that they would have no contact with the Syrian Arab Republic. Moreover, according to information from the Ministry of Foreign Affairs of the Syrian Arab Republic, students from the occupied Syrian Golan sometimes faced problems returning to their homes after a period of study in the Syrian Arab Republic. Several witness testimonies focused on the suffering of family separation; despite short distances, families were unable to meet due to an Israeli ban on travel to and from the Syrian Golan and the occupied Syrian Golan. As one witness said, "today I can go to China, to America, but not to my village". Witnesses also complained of high taxation and the difficulties of supporting a family.

93. Landmines continued to be a threat to safety, including that of children, and to limit movement of people and use of land. In January 2010, the Committee on the Rights of the Child called on Israel to "clear all anti-personnel mines in the occupied Palestinian territory, southern Lebanon and the occupied Syrian Golan".[40] In February 2010, an 11-year-old Israeli child lost his leg after stepping on a landmine in the occupied Syrian Golan. In May 2010, the Knesset introduced a bill establishing a mine action authority to manage the clearance of all non-operational minefields in Israel, including in the occupied Syrian Golan. At the time of writing, the bill had not yet been adopted as law.[41]

94. The Special Committee reiterated its concern about the lack of access to the occupied Golan by the United Nations human rights mechanisms and agencies, as well as other relevant organizations. Furthermore, local non-governmental organizations and individuals operating in the occupied Syrian Golan expressed difficulties with access to information, for example obtaining official figures on water consumption, due to a lack of cooperation by Israel and settlers.

[40] CRC/C/OPAC/ISR/CO/1, para. 11 (d).

[41] Survivor Corps, "Breaking news in Israel: mine free legislation introduced", May 2010. Available from http://my.survivorcorps.org.

VII. Conclusions and recommendations

A. Conclusions

95. This report of the Special Committee was based on oral and written testimonies and evidence collected from Palestinian, Israeli and Syrian witnesses, United Nations agencies and experts, international non-governmental organizations and government officials. In addition to this valuable material, the Committee would have benefited from visiting the occupied territories to see first-hand the situation on the ground and to discuss their findings with Israeli Government officials. However, the visit request was left unanswered.

96. The information received by the Committee showed a long-standing pattern of systematic violations of international human rights and humanitarian law by Israel. The culture of impunity, by which perpetrators of violations anticipate that they will not be brought to justice for their crimes, has allowed these violations to occur each year. Efforts to redress this situation should include criminal responsibility for perpetrators and the right to an effective remedy for victims.

97. The Committee was extremely concerned about efforts by Israel to transfer the occupied population from strategic areas of the Occupied Palestinian Territory, in contravention of its obligations under international humanitarian law. Forced evictions, home demolitions, the wall and revocation of residency rights resulted in forced displacement. Moreover, new legislation in the form of Military Orders Nos. 1649 and 1650 opened the door to wide-scale forced transfer or deportation.

98. The Committee was equally concerned about policies of collective punishment of the occupied Palestinian population, whether by means of the blockade on Gaza's 1.5 million inhabitants or by the restrictions on movement, including those resulting from the wall and its gate and permit regime. This overall closure policy, coupled with policies of separation of the West Bank from the Gaza Strip, resulted in a broad range of violations, not only of the right to freedom of movement but also of others, such as the rights to health, education and an adequate standard of living. In addition, the Committee noted ongoing practices and policies that discriminate against the Palestinian and Syrian populations, in contravention of Israel's international obligations.

99. Despite a partial and temporary moratorium in the West Bank brokered by the United States of America, evidence showing Israel's determination to continue its longstanding settlement enterprise in the Occupied Palestinian Territory and in the occupied Syrian Golan, was of great concern to the Committee. Israel's actions in this regard violate international humanitarian law, United Nations resolutions and political agreements, such as the road map for peace.

B. Recommendations

100. **The Special Committee wishes to make the following recommendations, including reiterating some of the recommendations made in its previous report (A/64/339):**

(a) The General Assembly should:

(i) Consider all means at its disposal to enable the Special Committee to fulfil its responsibilities, as mandated by the General Assembly, including with regard to access to the territories occupied by Israel since 1967; and allow access to United Nations agencies to the occupied Syrian Golan;

(ii) Urge Member States to implement the recommendations of the Special Committee, and intensify diplomatic efforts, including the imposition of appropriate sanctions to enforce Israel's compliance with relevant United Nations resolutions, particularly Security Council resolutions, and with international humanitarian and human rights law;

(iii) Urge the Security Council and Member States to ensure the implementation of the advisory opinion of the International Court of Justice and General Assembly resolution ES-10/15, in which the Assembly requested Israel to comply with its legal obligation to cease the construction of the wall in the occupied territory; dismantle the segments already built; repeal all legislative and regulatory acts adopted in view of the construction of the wall; and make reparation for the damage arising from its construction;

(iv) Urge the Security Council and Member States to enforce Security Council resolution 497 (1981) and similar relevant resolutions on the status of the occupied territories, including the occupied Syrian Golan, which declared the annexation of the occupied territories illegal;

(v) Request the High Contracting Parties to the Fourth Geneva Convention to take concrete measures, in respect of their obligations under article 1, to ensure respect for the Convention by Israel.

(b) The Government of Israel should:

(i) Stop its policies of confiscating land and of expanding settlements in the Occupied Palestinian Territory and the occupied Syrian Golan, which are contrary to international law; and ensure that Israeli forces protect Palestinian civilians and their property against settler violence, by carrying out prompt and thorough investigations and bringing to justice those responsible;

(ii) Restore freedom of movement for Palestinians throughout the Occupied Palestinian Territory by lifting the closure regime, and stop building roads accessible only to Israeli settlers and citizens and preventing access by Palestinians, in particular women and children, to their fields, schools, places of work, hospitals and other health-care facilities, as well as the passage of ambulances;

(iii) End the closure and collective punishment of the people of Gaza, and take urgent steps to end the current man-made crisis;

(iv) Cease construction of the wall in the Occupied Palestinian Territory and comply fully with the provisions of the advisory opinion of the International Court of Justice and all provisions of General Assembly resolution ES-10/15;

(v) Guarantee to prisoners and detainees from the Occupied Palestinian Territory and the occupied Syrian Golan a fair trial and detention conditions, in accordance with international humanitarian and human rights law;

(vi) Establish an independent and transparent system of accountability that ensures prompt and impartial investigations, that perpetrators are brought to justice and that victims enjoy the right to an effective remedy;

(vii) Refrain from obstructing the work of human rights defenders and peaceful civil activists and support and protect them in the context of their work;

(viii) Stop all measures that result in the forcible displacement of Palestinians from their land, including by repealing Military Orders Nos. 1649 and 1650 or amending them to ensure their compliance with international humanitarian and human rights law;

(ix) Urgently comply with resolution 497 (1981), which annuls the Israeli decision on the annexation of the occupied Syrian Golan, and end its occupation of the West Bank, including East Jerusalem, the Gaza Strip and the Syrian Golan;

(x) Implement the concluding observations and recommendations of United Nations treaty bodies and special procedures mechanisms, and the recommendations of the High Commissioner for Human Rights to the Human Rights Council;

(xi) Facilitate visits of separated families located in the Syrian Golan and the occupied Syrian Golan, pending a resolution to the conflict;

(xii) Clear all landmines in occupied territory, notably in the occupied Syrian Golan;

(xiii) Cooperate with the Special Committee and grant it full access to the occupied territories, in order to fulfil its mandate and with a view to holding direct consultation with the Israeli authorities concerned on issues of concern.

(c) The Palestinian Authority should:

Abide by its obligations under international human rights and international humanitarian law.